Supreme Court, U.S.
FILED
OCT 19 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-925

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, AN UNINCORPORATED ASSOC., AND THE FIRST CHURCH OF ISRAEL, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

Petitioners,

V.

ISRAELITE BIBLE CLASS, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH JUDICIAL DISTRICT

ALONZIA HARRIS
CHARLES DAVIS
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Pro Se

QUESTIONS PRESENTED

(1) Whether a litigant has a right under the Due Process clause of the Fourteeth Amendment to Constitution of the United States to be represented by a license attorney, before his or her property is taken away.

(2) Whether by not granting Petitioners Motion for Instanter, did the Illinois Supreme Court adopte the opinion of the Appellate Court in violation of Petitioners U.S. Constitutional Rights Amendment 1, and Illinois Constition Article 1, Section 1 & 2.

(3) Whether the Appellate denial of the Church counsel, and the Church could not represent itself in Court, and the Trustees was unable to represent the Church's interest, did the Appellate Court deny the Church due process and equal protection from anyone who decides to use any Court action to destroy the Church, so to steal the property of the Church.

(4) Whether a schism between two religious organization after having aquired church property, did the Appellate Court of

Illinois by affirming the Trial Court Order to take the entire 450 acres of real estate and farm equiptment to the exclusion of the Petitioner, violate Petitioners Illinois Consitutional Rights Article 1 Section 2 & 3.

(5) Whether Petitioners were denied due process of law when their property was taken from them through the trail Court and was denied a license attorney to respresent the Petitioners.

(6) Whether the Trial Court erred in its Order requiring Petitioners to follow the by-laws of the Israelite Bible Class, Inc., which include a requirement that all members attend Church once per week with the Israelite Bible Class in clear violation of Petitioners Constitutional Rights. Amendment 1.

(7) Whether the Trial Court erred in its Order requiring Petitioners to follow the by-laws of the (Respondent) Israelite Bible Class, Inc., a Religious Organization which has no provision for the forfeiture of property to the Israelite Bible Class, Inc., A

Religious Organization. But the Order states Petitioners will forfeit their homes to the Israelite Bible Class, Inc., if they fail to sign a pledge to the Israelite Bible Class, Inc., A Religious Organization within sixty (60) days of the Order.

(8) Whether the Order of the Trial Court stripped the children and grandchildren of Petitioners of their vested property rights without them being included as parties or without the minors being provided with legal assistance.

(9) Whether the Order of the Trial Court violated the freedom of religious protection of the First Amendment of the U.S. Constitution.

(10) Whether the Circuit Court, and the Appellate Courts denial of Petitioners request for appointed cousel after being informed that no attorney would take their case, after extensive efforts to obtain counsel, violated Petitioners rights to due process as required by the Fifth and Fourteenth Amendments of the Constitution of the United States and article

1 & 2 of the Constitution of the State of Illinois.

(11) Whether the Appellate Court denial of request for appointed counsel when it became apparent that Petitioners could not defend themselves nor obtain counsel on their own, violated their right to due process.

(12) Whether the Appellate Courts Order Dismissing all Petitioners from the Appeal denied Petitioners due process.

(13) Whether on July 16, 1978, the legal title to subject property was effectively conveyed by Warranty Deed from The First Church of Israel to the Israelite Bible Class by six men of the Respondence Religious Association, posing as Trustees, of the Petitioners Unincorporated Religious Association.

(14) Whether the Order of the Circuit Court requiring Petitioners to follow the by-laws of the (Respondent) Israelite Bible Class, Inc., A Religious Organization and these by-laws violate Petitioners rights under the laws of the State of Illinois including the right

to bequest property, rights to raise a family without outside interference, homestead rights, rights to dissolution of marriage, and the right to free speech.

(15) Whether the courthouse doors is being slamed in the face of Petitioners. Petitioners are owners of all or part of a community of around eighty (80) houses and trailers and the surrounding farmland. They purchased their own homes and raised their families in the community and now they are about to loose their homes not as a result of Petitioners refusing to pay moneys owed on the land, but as a result of their inability to obtain necessary legal assistance. In violation of the Constitution of the State of Illinois Article 1 Bill of rights Section 2.

LIST OF PARTIES

The parties of the proceeding below were the petitioners Alonzia Harris, Charles Davis, Mahalia Key and the Respondent the Israelite Bible Class, Inc.,

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALONZIA HARRIS, CHARLES DAVIS,
MAHALIA KEY, THE FIRST CHURCH OF
ISRAEL, AN UNINCORPORATED ASSOC.,
AND THE FIRST CHURCH OF ISRAEL,
INC., AN ILLINOIS NOT-FOR-
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ISRAELITE BIBLE CLASS, INC.,
AN ILLINOIS NOT-FOR-PROFIT
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RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS,
FIFTH JUDICIAL DISTRICT

The petitioner Alonzia Harris, Charles Davis, Mahalia Key, respectfully prays that a Writ of Certiorari issue to review the Order dismissing the Appeal of the Appellate Court of Illinois, Fifth Judicial District, entered in the above cause on March 9, 1988.

OPINION BELOW

The Circuit Court entered its Order February 19, 1987 awarding Respondent the entire 450 acres real estate, the Order of the trial court also gave Petitioners 60 days to claim in writing their intent to be bound by Respondent by-laws. A copy of the Circuit Court Order is attached as Appendix A.

The Appellate Court entered its Order in part August 11, 1987 dismissing The First Church of Israel, An Unincorporated Association, and The First Church of Israel, Inc., from the Appeal. On March 9, 1988 the remaining Petitioners were dismiss from the Appeal. A copy of the Orders is attached as Appendix B and C.

Petitioners contacted Mr. Larry Beard who had just finished law school and accepted Petitioners case on pro-bono basic, and notified the Appellate Court Clerk on March 26, 1988. Mr. Beard filed a Petition for Rehearing on March 29, 1988 and it was denied on April 5, 1988. A copy of the Order denying a Rehearing is attached as Appendix D.

Mr. Beard states in an affidavit to the Illinois Supreme Court, that his involvement in a capital murder case Venue in Williamson County cause him not to file Defendants Petition for Leave to Appeal, that was due May 10, 1988. Mr. Beard file with the Illinois Supreme Court on May 26, 1988 a "Motion to file Petition Instanter." On June 6, 1988 the Court denied his Motion to file Petition Instanter.

A Motion to Reconsider Motion for Leave to file Petition Instanter was file in the Supreme Court by Mr. Beard and was denied July 5, 1988. Petitioners file as pro se on July 19, 1988 in the Illinois Supreme Court a Motion to Reconsider Motion for Leave to File Petitioners Instanter. The Court denied Petitioners Motion to file Instanter August 1, 1988, and granted Petitioners Motion for a Stay Pending application of Writ of Certiorari. A copy of the Order of July 5, 1988 is attached as Appendix E. Also is a Order of August 1, 1988 is attached as Appendix F. A copy of the October 6, 1987 Order is attached as Appendix G. A Copy of the June 19, 1987 Order is attached as

Appendix H. A copy of the July 6, Motion is attached as Appendix I.

JURISDITION

The Respondent brought this suit in the Circuit Court of Pulaski County Illinois. Trial was held on January 7, 8, 1987, and the Respondents was awarded the entire 450 acres real estate and Petitioners was given (60) sixty days to sign a pledge to be bound by the Respondent Religious by-laws or be evicted.

On Petitioners Appeal, the Appellate Court of Illinois, Fifth Judicial District, on March 9, 1988 dismiss the Petitioners Appeal. A Petition for Rehearing was denied on April 5, 1988. Mr. Larry Beard attorney at law accepted Petitioners case on pro-bono basic, stated in an affidavit to the Illinois Supreme Court, that his involvement in a capital murder case venue in Williamson County cause him not to file Defendants Petition For Leave to Appeal, on time. Motion to file Petition Instanter was denied on June 6, 1988. The Jurisdiction of the Court to review the judgment of the Appellate Court of Illinois, Fifth Judicial District, invoked under 28 U.S.C. Section 1254(1).

CONSTITUTION PROVISION INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT 1:

> Congress shall make no law respection an establishment of religion, or prohibiting the free exercise thereof;... or the right of the people to assemble...

UNITED STATES CONSTITUTION AMENDMENT 5;

> Nor shall any person... be deprived of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CONSTITUTION AMENDMENT 14:

> Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protedtion of the laws.

CONSTITUTION OF THE STATE OF ILLINOIS ARTICLE 1 BILL OF RIGHTS SECTION 2. DUE PROCESS AND EQUAL PROTECTION

> No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

SECTION 3. RELIGIOUS FREEMON

> No person shall be required to attend or support any ministry of place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

STATEMENT OF CASE

A. Factual Background

In 1953 Mr. Lucius Casey, Sr., founded

a Religious Organization called the Israelite Bible Class. On March 11, 1953 an Article of Incorporation was filed with the State of Illinois. The by-laws of the Organization required members to attend church each week, to participate in certain religious activites, and allows members to build houses on the Israelite farm, and to share in the profits of the farm. Complaint Exhibit B, p. 10-18.

On April 7, 1953, the Israelite Bible Class, Inc., members purchased property located in Pulaski County Illinois. The farm now includes a community of around 80 houses which were purchased by each individual, at each individual own expense.

On December 31, 1971, the Directors of the Board of the Israelite Bible Class, Inc., adopted a resolution to change the name of the Israelite Bible Class, Inc., to The First Church of Israel. The land owned by Israelite Bible Class, Inc., was deeded over to The First Church of Israel by the trustees of the Israelite Bible Class, Inc.

On July 6, 1978, The First Church of Israel was Incorporated. On July 17, 1978 Donzel Colemen, James Autrey, Sally Cleave, William Woods and Gifford Woods who were no longer trustees of The First Church of Israel caused a Warranty deed to be filed and recorded with the Pulaski County Recorded of Deeds Office. This deed reported to convey the Israelite farm back to the Israelite Bible Class, Inc.

In 1978 a disagreement arouse with certain members headed by Edward Bruce, in an attempt to take over the Israelite farm for his own use, filed suit in Cook County Illinois to reinstate the old name of Israelite Bible Class, Inc.

In June, 1986, this action was filed to force Petitioners to leave their homes located on the Israelite farm or to have petitioners sign a written statement that Petitioners would attend church and be members of the Israelite Bible Class, Inc.

B. Prodeeding in the District Court

The Court Order of the Pulaski County Circuit Court which was issued on February 18,

1987 states that Defendants should have the opportunity to come under and in compliance with said by-laws within 60 days of the order, and upon written claim and intention to be bound by such by-laws delivered to the officers of the Israelite Bible Class, Inc., should not be subject to forfeiture or revocation of their rights as such individual members for past acts or violations of said by-laws. (Order, February 18, 1987) the by-laws for which the Court has ordered Petitioners to sign or be evicted from their homes include religious practices such as not eating catfish and pork, (Article 7 & 17, by-laws) allows whipping of ones spouse (Article 7 & 23) and bans any visitors to visit anyone at the Israelite community without notifying the President of the Israelite Bible Class in advance. Any violation of the by-laws can result in a fine and if the fine is not paid a member can be banished without any form of due process. (Article 7 & 27).

Petitioners attorney died before the trial began. Petitioners tried through all avenues to obtain new counsel but because of the nature

of the dispute, the lack of funds and the rural location were unable to find a single attorney in Southern Illinois to accept the case on their behalf. Petitioners brought this to the attention to both the Circuit Court and the Appellate Court, but both ignored the problem and forced Petitioners to be pro se litigants even though it was well establish that Petitioners were for the most part functionally illiterate to law and totally unqualified to defend their homes from the Israelite Bible Class attorneys.

Mr. Larry Beard who excepted Petitioners case on pro-bono basic, filed Petitioners Motion for Rehearing in the Illinois Appellate Court is not a member of the U.S. Supreme Court Bar and therefore is not able to file this Writ.

REASON FOR GRANTING THE WRIT

I.

Where Petitioners were denied the benefit of appointed counsel by the Illinois Appellate Court to assist them in their Appeal, due process demands that no person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws. Article 1 & 2 Constitution of the United States of Illinois.

Appellate Court denial of request for appointed counsel when it became apparent that Petitioners could not defend themselves nor obtain counsel on their own violated their right to due process.

U.S. Const. Amend. I.
U.S. Const. Amend. V.
U.S. Const. Amend. XIV.
Illinois Constitution Article 1 & 2.

Mathews V. Eldreidg, 424 U.S. 320, 96, S. ct.893 (1976).

Joint Anti-Fascist Comm. V. Mc Grath, 341 U.S. 123 (1951).

Armstrong V. Manzo, 380 U.S. 545 (1965)

Chambers V. Baltimore & Ohio Railroad, 207 U.S. 142, 28 S. Ct. 34 (1907).

Ryland V. Sharpiro, 708 F. 2d 967 (5th Cir. 1983).

Porter V. Califano, 592 F. 2d 770 (5th Cir. 1979).

Adams V. Carlson, 488 F. 2d. 619 (7th Cir. 1973).

Martin V. Lauer, 684 F. 2d 24 (D.C. Cir. 1982).

Appellate Court Order Dismissing all Petitioners from the Appeal denied petitioners due process.

U.S. Const. Amend. V.
U.S. Const. Amend. XIV.
Illinois Constitution Article 1 & 2.
Ill. Rev. Stat. 110 & 1-106.

Porter V. Califano, 529 F. 2d 770 (5th Cir. 1979).

The Order of the Circuit Court Court requires Petitioners to follow the by-laws of the Israelite Bible Class, Inc., a Religious Organization include a requirement that all members attend church once per week with the Israelite Bible Class in clear violation of Petitioners Constitution rights.

U.S. Const. Amend. I.
U.S. Const. Amend. XIV.
Jones V. Wolf, 443 U.S. 595, (1979).

Cantwell V. Commecticut, 310 U.S. 296 (1940).

Serbian Orthodox Diocese V. Milivojevich, 426 U.S. 696 (1976).

York V. First Presbyterian Church of Anna, 474 N.E. 2d 716 (Ill. App. 5th Dist. 1984).

The Order of the Circuit Court requires Petitioners to follow the by-laws of the (Respondent) Israelite Bible Class, Inc., a Religious Organization which has no provision for the forfeiture of property to the Israelite Bible Class Inc., but the order states Petitioners will forfeit their homes to the (Respondents) Israelite Bible Class, Inc., if they fail to sign a pledge to the (Respondent) Israelite Bible Class, Inc., within 60 days of the Order.

The Circuit Court denied Petitioners Constitutional rights to due process when it failed to consider established case law in deciding case. Little Grove V. Todd, 26 N.E. 2d 485 (1940).

When the members of a religious congregation divide and one fraction brakes away and forms a

new organization, the title to property will remain in that part of the congregation which adheres to the tenets and doctrine originally taught by the congregation to whose use the property was originally dedicated.

From 1971 all members of the Israelite Bible Class, Inc., were members of The First Church of Israel. This changed when the splinter group broke of in 1978.

The Founder of the Israelite Bible Class, Inc., and the person who set up the doctrine of the church, Mr. Lucius Casey, Sr., was a member of The First Church of Israel until his death in November of 1978.

The Order of the Circuit Court requires Petitioners to follow the by-laws of the (Respondents) Israelite Bible Class, Inc., a Religious Organization, and these by-laws violate Petitioners right under the laws of Illinois including the right to bequest property, right to raise a family without outside interference, homestead rights, rights to dissolution of marriage,and the right to free speech.

II.

The decision of the Appellate Court to dismiss the Petitioners from the Appeal, violated the Petitioner right to have their case judged on the principles and rules established by prior authority.

The Appellate Court, as one of its grounds in support of its decision to dismiss Petitioners Appeal in its March 9, 1988 Order made reference to the cases of People V. Smith (1987), 159 Ill. App. 3d 150, 512 N.E. 2d 68), and People V. Kruger (1986), 146 Ill, App. 3d 530, 495 N.E. 2d 993,.

In the case of People V. Smith (1987), 159 Ill. App. 3d 150, 512 N.E. 2d 68.) that the Appellate Court base its decision on does not appear in either book, violating Petitioners rights to due process and to be judged on the principles and rules established by prior authority. On page 71 of 512 N.E. 2d you do find a People V. Smith, however this case is not applicable to the facts of this cause.

In the case of People V. Kruger (1986), 146 Ill. App. 3d 530, 495 N.E. 2d 993, that

the Appellate Court base its decision on, is not applicable to the facts of Petitions case at bar, in People V. Kruger 495 N.E. 2d 993 defendant, Andrew J. Schneider even though his name was mention in the Appeal of his wife he himself did not sign the Appeal to be made a part of the Appeal.

The Appellate Court overlooked the settled rule of law, as codified in (152 N.E. 2d 627), Illinois Central Railroad Company, A Corp, Appellant, V. The Michigan Central Railroad Company, A Corp, and The York Central Railroad Company, A Corporation, Appellees. June 30, 1958. The Court said: "All Courts, especially Courts of intermediate Review, must not only decide the particular case before it, but do so on the principle and rules established by prior authority for the guidance of men in their relations with each other; otherwise judges become no more than arbitrators rendering fireside equity."

And for the reasons stated under petitioner's due process argument, demonstrates the highest need for exercise of this honorable

Court's discretion to issue the Writ of Certiorari. This case is a proper one for exercise of the Court's Certiorari jurisdiction.

CONCLUSION

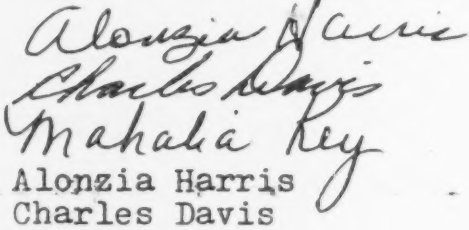
Alonzia Harris, Charles Davis, Mahalia Key, had a constitutional right to be represented in court which was denied them by the Illinois Appellate Court Fifth Judicial District. The due process requirements of the Fifth and Fourteenth Amendments require that an individual be given a meaningful hearing before his or her property is taken from him or her. The record is full of example where the petitioners were shown not to be able to handle their own defense. The Circuit Court and the Appellate Court were notified of the problems that petitoners had in getting legal counsel. The order of the Appellate Court of Illinois Fifth Judicial District should be reversed and a new trial granted where petitioners are represented by court appointed attorney.

In addition, any court enforcement of the by-laws of the (Respondent) Israelite Bible Class, Inc., A Religious Organization should be decleared unconstitutional.

For the foregoing reasons, Petitioners Alonzia Harris, Charles Davis, Mahalia Key,

respectfully requests that a Writ of Certiorari issue to review the judgment of the Illinois Appellate Court Fifth Judicial District.

Respectfully submitted,



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November 28, 1988

APPENDIX

IN THE CIRCUIT COURT
FOR THE FIRST JUDICIAL CIRCUIT OF ILLINOIS

ISRAELITE BIBLE CLASS, INC.,) An Illinois Not-for-Profit) Corporation.))) Plaintiff,))) VS.)) LUCIUS CASEY, JR., ALONZIA) HARRIS, CHARLES DAVIS,) MAHALIA KEY, THE FIRST) CHURCH OF ISRAEL, An) Unincorported Association,) and THE FIRST CHURCH OF) ISRAEL, INC., An Illinois) Not-for-Profit Corporation.)) Defendants.)	NO. 86-CH-12 FILED Feb. 19,1987

JUDGMENT ORDER

Now on this 7th and 8th day of January, 1987 this cause comes on for trial; the court finds that it has subject matter jurisidiction over this cause and jurisdiction over the respective parties; the Court calls the case; Plaintiff, Israelite Bible Class, Inc., is present in open Court together with their attorneys, Richard Kruger and Paul F. Henry of the lawfirm Kuger and Henry; Plaintiff announces ready for trial; the Defendants,Lucius Casey, Jr., Alonzia Harris, Charles

Davis, Mahalia Key, The First Church Of Israel, An Illinois Not-for-Profit Corporation, and representatives of an Unincorporated Association, The First Church of Israel, are present in open Court; all Defendants announce ready for trial; the Court finds that an Order of Default was duly entered against Defendant, Lucius Casey, Jr., on July 21,1986, for failure to appear or plead and judgment shall be entered against him according to plaintiff's proof; the Court hears oral testimony adduced, examines exhibits admitted, judicially notices the record and proceedings of Case 78-CH-5 venued in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois, entertains arguments of the parties and being otherwise fully advised in the premises makes the following specific findings:

1. That on July 16,1978, the legal title to the subject property was vested in Lucius Casey, Jr., Donzel Coleman, James Autrey, Sally Cleave, William Woods, Gifford Woods and Lucius Casey, Sr. in their capacity as Trustees of The First Church of Israel, an Unincorported Religious Association.

2. That on July 16,1978, the legal title to the subject property was effectively conveyed by Warranty

Deed by the Trustees of The First Church to the Israelite Bible Class, Inc. The Court further finds that there is no convincing evidence of undue influence, fraud or lack of capacity on the part of anybody who executed said Deed.

3. The incorporation of The First Church of Israel, an Illinois Not-for-Profit Corporation, did not affect the validity of the conveyance from The First Church of Israel to the Israelite Bible Class on July 16,1978. The First Church of Israel was not incorporated as a religious corporation pursuant to Illinois Revised Statute, Chapter 32, Section 164 et seq., and incorporation of said entity pursuant to the General-Not-for-Profit Corporation Act precluded the application of Illinois Revised Statute, Chapter 32, Section 170. The First Church of Israel, an Unincorporated Association, took no affirmative action to convey the subject property to the successor corporation and,therefore, legal title was vested in the Trustees at the time of the conveyance on July 16,1978.

4. The Court takes Judicial Notice of the record and proceedings conducted in 78-CH-5 venued in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois. Based upon the judicial admissions and stipulations and

the conveyance made by Lucius Casey, Jr. pursuant thereto, the Court finds that he effectively conveyed all his rights title and interest in the property, individually and as Trustee of The First Church of Israel, to the Israelite Bible Class.

5. A Defendant, and each of them, have preserved their rights as individuals acquired by virtue of their original membership in the Israelite Bible Class. In accordance with such reservation as agreed upon, recognized and set out in this Court's Order entered in Cause 78-CH-5 lately pending in this Court, entered on or about March 1,1982, and the right of use, occupancy and peaceful enjoyment of the real estate herein described, pursuant to the by-laws of the Israelite Bible Class, Inc, have not been forfeited or revoked pursuant to said by-laws by any action of the Israelite Bible Class, Inc.,or any of the individual Defendants.

6. The individual Defendant, in so far as their actions in and out of Court may be construed to be a violation of the by-laws of the Israelite Bible Class, Inc., and as such, subjecting the said Defendants to forfeiture or revocation of rights and privileges as members of the Israelite Bible Class. Inc., should have

the opportunity to become under and compliance with said by-laws within a reasonable length of time, and upon written claim and intention to be bound by such by-laws delivered to the Officers of the Israelite Bible Class, Inc., should not be subject to forfeiture or revocation of their rights as such individual members for past acts or violations of said by-laws.

7. The refusal or failure of the said individual Defendants to reaffirm their acceptance of the by-laws of the Israelite Bible Class, Inc., as herein set out, shall subject the said Defendants to the application of the by-laws in any action by the corporation to declare a forfeiture or revocation of the individual Defendant's rights under said by-laws, for any acts, heretofore or hereafter performed.

8. The Court takes Judicial Notice of the Order entered on or about March 1,1982, in Cause 78-CH-5 venued in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois. The Defendants are collaterally estopped to challenge factual determinations and legal issues actually resolved in that proceeding. The Defendants, Alonzia Harris, Charles Davis, Mahalia Key, as individuals, and The First Church of Israel, an

Illinois Not-for-Profit Corporation, are bound by the judicial admissions in said prior proceeding and estopped from claiming any title or interest on the subject property.

9. The incorporation of The First Church of Israel under the Illinois General Not-for-Profit Corporation Act effected a dissolution or cessation of The First Church of Israel, as an independent Unincorporated Religious Association. The Not-for-Profit Corporation was organized for religious purposes, comprised of identical members as the association, governed by the same "Officers," had the same general purpose, constitution and by-laws and in all respects was identical to the association except as to name.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

A. That as and against Lucius Casey, Jr., Alonzia Harris, Charles Davis, Mahalia Key (individually as Trustees of The First Church of Israel, an Unincorported Religious Association), The First Church of Israel, an Unincorporated Religious Association and The First Church of Israel, an Illinois Not-for-Profit Corporation, their heirs, successors, assigns and all persons claiming from, through, or under such parties, the israelite Bible Class, Inc., a Not-for-Profit Corporation, holds good, valid,

and superior title in fee simple absolute to the folow-ing described property:

> The Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section Twenty (20), Township Fifteen South (T15S), Range One West (R1W) of the Third Principal Meridian; the Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) of Section Thirty-Three (33), except right of way of the C&EI Railroad, and except four (4) acres, more or less, lying north of said right of way, in Township fourteen South (T14S), Range One West (R1W) of the Third Principal Meridian; the Northeast Quarter (NW ¼) of the Northwest Quarter (NW ¼) of Section Thirty-Three (33), Township four-teen South (T14S), Range One West (R1W) of the Third Principal Meridian; the Southwest Quarter (SW ¼) of Section Thirty-Three (33), Township Fourteen South (T14S), Range One West (R1W); the North Half (N ½) of the Northwest Quarter (NW ¼) and the Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼) of Section Four (4), Township Fifteen South (T15S), Range One West (R1W); and all that part of the Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼) of Section Thirty-Three (33), Township Fourteen South (T14S), Range One West (R1W), which lies west of Cache River, containing three (3) acres, more or less, situated in Pulaski County, Illinois.

B. That Plaintiff is entitled to exercise full author-ity over the aforesaid property, subject to the rights of the individual Defendants, as members of the Israelite Bible Class, Inc., (which rights have been established and continue to exist under the original membership of

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the Defendants of said group, until forfeited or revoked pursuant to the by-laws of said Israelite Bible Class, Inc.,); and that Defendants shall have sixty (60) days from the date of this Judgment to affirmatively assert their said rights, by instrument in writing to the President and Secretary of the Plaintiff, signifying their claim and intention, to be jubject to the said plaintiff's by-laws as before July 6,1978, the date of the incorporation of The First Church of Israel, Inc., and that after and such written declaration by Defendants, the use exercise of Plaintiff's said real estate by Plaintiff and Defendants shall be subject only to the said by-laws and general laws of the State, and any action to forfeit or revoke any of the rights of the Defendants shall be based only upon acts or ommissions of the Defendants occurring after the date of such written instrument; provided always, that the Plaintiff's legal and possessory rights to such real estate shall be enforceable by a Court of competent jurisdication against any person violating any such legal or possessory right.

C. That as to any Defendant who does not by instrument in writing claim or assert his or her intention to be bound by said Plaintiff's by-laws, as aforesaid, within

sixty (60) days of the date hereof, such Defendants shall be subject to forfeiture or revocation procedures under the by-laws of said Plaintiff for act or ommission occurring before or after the date of this Judgment.

D. That the named Defendants and those claiming from, through or under such parties shall refrain from construction, alterations, modifications, destruction, removal or bringing any mobile-home or permanent structure on the property for a period of sixty (60) days subsequent to the effective date of this Order or until their reaffirmation as members of the Israelite Bible Class, Inc.

DATED: FEBRUARY 18,1987

ENTER:

William H. South
JUDGE

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NO. 5-87-0127

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ISRAELITE BIBLE CLASS, INC., An Illinois Not-for-Profit Corporation,	Appeal from the Circuit Court of Pulaski County
Plaintiff-Appellee,	NO. 86-CH-12
VS.	FILED AUG. 11,1987
ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, An Unincorporated Association and THE FIRST CHURCH OF ISRAEL, INC., An Illinois Not-for-Profit Corporation,	
Defendant-Appellants	

O R D E R

This cause having been considered on defendants' letter request pertaining to supplementation of the record on appeal, plaintiff's response thereto and defendants' motion attacking plaintiff's response, and defendant's motion to supplement the record on appeal, and defendants' response to this court's rule to show cause, and the

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court, being advised in the premises, finds:

That plaintiff, Israelite Bible Class, Inc., brought an action in ejectment against defendants, Alonzia Harris, Charles Davis, Mahalia Key, The First Church of Israel, an unincorporated association, and The First Church of Israel, Inc., an Illinois Not-for-Profit corporation, to gain possession of certain property the ownership of which had been adjudicated in plaintiff's favor in a prior Pulaski County proceeding, NO. 78-CH-5. Defendants, who were once part of plaintiff's church and who later separated themselves from the organization due to differences in theology, have continued to reside on the subject premises subsequent to entry of judgment in cause NO.78-CH-5. Judgment was entered in the instant cause in plaintiff's favor on February 19,1987;

That on June 1,1987, this court received a letter from defendants Harris, Davis and Key indicating that the Circuit clerk of Pulaski County had been requested by them pursuant to a letter dated February 24,1987, to release all records pertaining to Pulaski County Nos. 86-CH-12, 81-CH-3 and 78-CH-5. The Clerk responded that he would not release the records in Nos. 81-CH-3 and 78-CH-5 unless ordered to do so by the appellate court. NO.86-CH-12

concerns the instant appeal, while NO.81-CH-3 is before this court as a separately docketed appeal. The letter includes a request by defendants that this court advise the circuit clerk to release the requested records. Plaintiff filed a response on June 22,1987, directed against this letter. In its response, plaintiff points out that Supreme Court Rule 361 (107 Ill. 2d R. 361) provides that unless another form is prescribed in the rules, an application for an order or other relief must be made by filing a formal motion as contained in paragraph (a) of the rule. Plaintiff contends that the letter is an inappropriate vehicle for obtaining relief and should be stricken. In the alternative, plaintiff requests that the letter motion be denied as the defendants in NO.81-CH-3 are not involved in the present case;

That on June 29,1987, defendants filed a motion in opposition to plaintiff's response. In this motion, defdendants attempt to demonstrate the relationship of the two other Pulaski County cases with the instant case. However, defendants indicate in paragraph five of their motion that the June 1,1987, letter addressed to the clerk of the appellate court was not a motion to supplement the record on appeal with the record in Nos.81-CH-3 and 78-CH-5. Defendants explain that their letter

merely requested that the clerk of the appellate court request the circuit clerk to release all records specified by them in their February 24,1987, letter to the circuit clerk. They request that the response filed by plaintiff be stricken as there was never a motion for leave to supplement the record on appeal;

That defendants' position is illogical. On the one hand, they unequivocally request the clerk of the appellate court to request that the circuit clerk of Pulaski County provide the trial records in Nos. 81-CH-3 and 78-CH-5, ostensibly for the purpose of supplementing the record on appeal in NO. 86-CH-12. However, they move to dismiss the response of plaintiff attacking such relief on the ground that they have not filed a motion seeking the relief outlined in their letter of June 1,1987, In essence, defendants are requesting that a supplemental record be submitted to this court but would have this court strike plaintiff's objection thereto because request is not in the form of a formal motion. Because defendants refuse to acknowledge that they have filed a formal motion requesting that the record be supplemented, they cannot obtain such relief and the subsequent pledings addressing this matter rendered moot;

That defendants also move to supplement the record on appeal to include their Exhibit No. 4, which is an abstract of title to 450 acres of real estate in issue here. Defendants allege that the exhibit was offered, but not admitted, into evidence. Inasmuch as plaintiff offers no objection and the exhibit was tendered as evidence, the record on appeal should be supplemented accordingly;

That on June 19,1987, a written order was entered in this court denying plaintiff's motion to dismiss on jurisdicational grounds relating to the timeliness of the notice of appeal. However, the court entered an order on its own motion, directing defendants to show cause why the appeal as to The First Church of Israel and The First Church of Israel, Inc. should not be dismissed for lack of jurisdiction where it appears that the notice of appeal on behalf of these defendants was prepared and submitted by persons not authorized to practice law;

That defendants in their response to the rule to show cause, relate in great detail their inability to secure counsel to represent them in these proceedings following the death of Clinton Thurston, who represented them

before the trial court. Thurston died in early 1986 prior to entry of final judgment. Defendants then proceeded in the trial court without counsel. They arque in their response that if this court were to dismiss the appeal as to the corporation and unincorporated association, these entities would be denied a right to appeal from a final judgment of the circuit court as guaranteed by Article VI, section 6 of the Illinois constitution of 1970;

That defendants principally rely on two cases in support of their position that the prosecution of the appeal on behalf of all defendants should proceed despite the absence of counsel. The first case is Gonsior V. Alternative Staffing, Inc. (Minn. App. 1986) 390 N.W. 2d 801, wherein it was held that on appeal from the denial of an unemployment claim would not be dismissed where the relator was represented before the unemployment commission and the appellate court by her boyfriend, a non-attorney. Defendants also cite Janiczed V. Dover Mangement Company (1985), 134 Ill. App. 3d 543,481 N.E. 2d 25, wherein it was held that the trial court improperly dismissed plaintiff's cause of action based upon the unauthorized practice of law where plaintiff's counsel

was properly licensed to practice law when retained by plaintiff but was subsequently disbarred prior to the filing of the complaint. In reinstating plaintiff's cause of action, the court reasoned that since plaintiff was unaware of the change in counsel's status, it would be unfair to rigidly adhere to the rule of law that prohibits representation by non-attorneys;

The defendants' reliance on Gonsior is misplaced as that court did not condone the unauthorized practice of law but merely allowed the appeal to continue due to the unusual procedural posture of the case, while serving notice that it would dismiss future appeals brought by non-lawyers.

> "Some jurisdictions have dismissed action where a party has retained a non-attorney to pursue an appeal. See, eg., Ebeling V. Continental Illinois National Bank & Trust Company of Chicago, 272 Cal. App. 2d 724, 77 Cal. Rptr. 612,613 (1969); see also Midwest Home Savings & Loan Association V. Ridgewood, Inc., 123 Ill. App 3d 1001, 79 Ill. Dec. 355,358, 463 N.E. 2d 909,912 (1984) (secretary of corporation could not pursue an appeal without retaining an attorney; '[a]n opposite conclusion would condone the unauthorized practice of law by a corporate litigant through layman agency'. Many courts have also held a proceeding in an action by a non-attorney is a nullity, and if appropriate and timely steps are taken, the suit may be dismissed, the judgment reversed, or the action of the non-attorney disregarded. [Citations] Although we note dismissal of proceedings commenced by a non-lawyer is a drastic remedy, [citation], the purpose of the rule is to protect the public. [Citation] Thus, one court reversed the dismissal of an action where an attorney was disbarred after

he had filed a party's complaint, since the party never 'consciously elected to be represented by a layman, 'Janiczek, 89 Ill. Dec. at 675, 481 N.E. 2d at 27. In the present situation, however, Gonsior has consciously chosen to be represented by a non-attorney, and we believe dismissal would not be unduly harsh.

Ordinarily, therefore, we would dismiss Gonsior's appeal due to her representation by a non-attorney. However, we note the issue of Gonsior's representation by a non-attorney was previously raised in the Commissioner's memorandum to the supreme court when Gonsior appealed this court's discharge of her writ. The supreme court did not dismiss Gonsior's appeal due to her representation by non-attorney, and we must be guided by the supreme court's actions in this instance. However, in the future we will enforce the legislative directives, prevent the unauthorized practice of law and dismiss appeals brought by non-lawyers." 390 N.W. 2d at 804, 805.

The Janiczek case is distinguishable because, here, following the death of Attorney Thurston, defendants did not procure the assistance of counsel and instead proceeded in their defense without counsel.

IT IS THEREFORE ORDERED that defendants' letter

request to supplement the record on appeal to include the trial court records in Pulaski County, Nos. 86-CH-12, 81-CH-3,and 78-CH-5, shall be, and the same hereby, stricken for failure to comply with Supreme Sourt Rule 361 govering the filing of motions for relief in the reviewing court.

IT IS FURTHER ORDERED that defendant's motion to supplement the record on appeal to include Exhibit No. 4, shall be, and the same hereby is GRANTED.

IT IS FURTHER ORDERED that the appeal of defendants, First Church of Israel and First Church of Israel, Inc., shall be, and the same hereby is, dismissed for the reasons assigned in the June 19,1987, rule to show cause.

IT IS FURTHER ORDERED that those portions of defendants brief seeking relief in favor of defendants, First Church of Israel and First Church of Israel, Inc., shall be, and the same hereby are, stricken.

NO. 5-87-0127

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ISRAELITE BIBLE CLASS, INC., An Illinois Not-for-Profit Corporation, Plaintiff-Appellee, V. ALONZIA HARRIS, CHARLES DAVIS MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, An Unincorporated Association, and THE FIRST CHURCH OF ISRAEL, INC., An Illinois Not-for-Profit Corporation, Defendants-Appellants.	Appeal from the Circuit Court of Pulaski County, Illinois.- FILED MARCH 9,1988 Honorable William H. South, Presiding Judge.

LEWIS, J.

ORDER

The plaintiff, Israelite Bible Class, Inc., brought an action in ejectment against defendants, Alonzia Harris, Charles Davis, Mahalia Key, The First Church of Israel, an unincorporated association, and The First Church of Israel, Inc., an Illinois Not-for-Profit Corporation, to gain possession of certain property the ownership of which had been adjudicated in plaintiff's favor in a

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prior Pulaski County proceeding, No. 78-CH-5. Defendants, who were one part of plaintiff's church and who later separated themselves from the organization due to differences in theology, have continued to reside on the subject premises subsequent to entry of judgment in cause No. 78-CH-5. Judgment was entered in plaintiff's favor on February 19,1987.

The defendants-appellants, Alonzia Harris, Charles Davis, Mahalia Key, Trustees of The First Church of Israel, an unincorporated association, and The First Church of Israel, Inc., filed a notice of appeal on February 2,1987, which reads in pertinent part as follows:

NOTICE OF APPEAL

Date of Judgement: The 8th day of January, 1987. Judgement was granted [sic] to plaintiff, the Israelite Bible Class, Inc., given [sic] plaintiff possession of the appellants, [sic] real estate. Order was also given to the Appellants to join plaintiff organization and come under constitution, charters, and by-laws of said entity or be evicted from premises and barred entry thereof within sixty (60) days of Judgement issued.

DEFENDANT NOTICE TO APPEAL

Judgement of order issued the 8th day of January, 1987.

Alonzia Harris, Charles Davis, Mahalia Key, Trustees of The First Church of Israel, An Unincorporated association, and The First Church of Israel, Inc., hereby petitions [sic] the appellate Court for review of order issued the 8th day of January, 1987.

Trustee

s/Alonzia Harris

s/Charles Davis

s/Mahalia Key

Subscribed and sworn to before me this 2nd day of February, 1987.

s/Rosaline Lingle

Notary Public

County of Union

"Official Seal"

Rosaline Lingle

Notary Public, State of Illinois

My Commission Expires 8-24-90

The plaintiff-appellee, Israelite Bible Class, Inc., filed a motion to dismiss the appeal on May 5,1987, on jurisdictional grounds claiming that the notice of appeal was filed prematurely. Circuit Judge William H.

South had orally pronounced his findings and judgment on January 8, 1987, but no written judgment was entered until February 18,1987, and no further notice of appeal was filed.

On June 19,1987, this court entered a written order denying plaintiff's motion to dismiss on jurisdictional grounds relating to the timeliness of the notice of appeal. However, this court then entered an order on its own motion, directing defendants to show cause why the appeal as to The First Church of Israel and The First Church of Israel, Inc., should not be dismissed for lack of jurisdiction where it appears that the notice of appeal on behalf of these defendants was prepared and submitted by persons not authorized to practice law.

After responses to this motion to show cause, this court on August 11,1987, entered an order in part as follows:

IT IS FURTHER ORDERED that the appeal of defendants, First Church of Israel and First Church of Israel, Inc., shall be, and the same hereby is DISMISSED for the reasons assigned in the June 19,1987, rule to show cause.

IT IS FURTHER ORDERED that those portions of defendants' brief seeking relief in favor of defendants,

First Church of Israel and First Church of Israel, Inc., shall be, and the same hereby are, STRICKEN.

On September 2,1987, and September 4,1987, the plaintiff filed three separate motions, including a motion to supplement the record on appeal, a motion to amend the brief and a motion to dismiss the appeal. The plaintiff's motion to dismiss, filed September 2,1987, maintains:

"[t]hat the rights of the individuals, Alonzia Harris, Charles Davis, and Mahalia Key, in the subject real estate have been conclusively determined in the case of Perry Sankey, et al., v. Lucius Casey, Sr. et al., Number 78-CH-5 venued in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois, by virtue [sic] of the Final Judgment entered therein on March 1,1982. The only rights in the subject real estate that said individuals can now assert are derivative of their membership in The First Church of Israel, an Unincorporated Association. Since the appeal of said entry has been dismissed by virtue of the Court's Order entered August 11,1987, the appeals of the named individuals must also be dismissed."

Defendants responded to these motions and on October 6,1987, this court entered the following order:

"This cause having been considered on motions of plaintiff-appellee, Israelite Bible Class, Inc., to

supplement record on appeal, to amend brief and to dismiss appeal, and the motion of defendants-appellants for appointment of counsel on appeal and the court having examined the record on appeal and being fully advised in the premises:

IT IS THEREFORE ORDERED that the motion of plaintiff-appellee to supplement record on appeal be, and the same hereby is, GRANTED;

IT IS THEREFORE ORDERED that the motion of plaintiff-appellee to amend brief be, and the same hereby is, GRANTED;

IT IS THEREFORE ORDERED that the motion of plaintiff-appellee to dismiss appeal be, and the same hereby is, TAKEN WITH THE CASE;

IT IS THEREFORE ORDERED that the motion of defendants for appointment of counsel on appeal be, and the same hereby is, DENIED."

Therefore, the appeal has come before this court on the motion to dismiss as well as the merits of the case.

This court must, at this point in the proceedings, dismiss the appeal. From our examination of the record, the defendants, individually, may have no interest in or rights to the property in question. However, we need

not examine or analyze the cause on that basis. The remaining defendants have not appealed this cause. The notice of appeal was filed in this case by Alonzia Harris, Charles Davis, Mahalia Key, Trustees of The First Church of Israel and The First Church of Israel, Inc., and signed by them as "Trustee." Futher, the briefs were submitted on behalf of the church and no argument was made on behalf of the individual defendants other than in their official capacity as trustees. The First Church of Israel and The First Church of Israel, Inc., have been heretofore dismissed and all portions of the brief seeking relief in their favor have been stricken.

Supreme Court Rule 303 (c) (107 Ill. 2d R. 303 (c) (3), provides that notice of appeal "shall contain the signature and address of each appellant or his attorney." In a zoning ordinance case, People V. Krueger (1986), 146 Ill. App. 3d 530, 495 N.E. 2d 993, where an appeal was taken on behalf of both Andrew and Geraldine Schneider, as owners or possessors of certain property, and where only Geraldine had signed the notice of appeal, the court held that Andrew was not a proper party to the appeal. (See generally People V. Smith (1987), 159 Ill. App. 3d 150, 512 N.E. 2d 68.) Although the individual

defendants were joined in and participated the the cause in the trial court, they are not parties to the instant appeal because they signed the notice of appeal in their capacities as trustees.

The motion to dismiss as to all remaining defendants is hereby granted.

APPEAL DISMISSED.

HARRISON, P.J., AND CALVO, J. Concur.

NO. 5-87-0127

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ISRAELITE BIBLE CLASS, INC., An Illinois Not-for-Profit Corporation,	)	Appeal from the Circuit Court of Pulaski County.
Plaintiff-Appellee,	)	
VS.	)	NO. 86-CH-12
ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, An Unincorporated Association, and THE FIRST CHURCH OF ISRAEL, INC., An Illinois Not-for-Profit Corporation,	)	FILED APR. 5,1988
Defendant-Appellant.	)	

O R D E R

This cause coming to be heard on appellants' petition for rehearing, and the Court being advised in the premises;

IT IS ORDERED that the petition for rehearing be, and hereby is DENIED.

E-1

NO. 67057

IN THE

SUPREME COURT OF ILLINOIS

Israelite Bible Class, Inc.,)
an Illinois Not-for-Profit)
Corporation,)
)
Plaintiff-Appellee,)
Ra)
VS.)
)
Alonzia Harris, (et al),)
)
Defendants-Appellants.)
Peto

MOTION TO RECONSIDER MOTION FOR LEAVE TO FILE PETITION INSTANTER

Appellants, Alonzia Harris, (et al), Motion to reconsider motion for leave to file is denied.

Justice Jos. F. Cunningham

FILED
JULY 5,1988

F-1

No. 67057

IN THE

SUPREME COURT OF ILLINOIS

ISRAELITE BIBLE CLASS, INC., An Not-for-Profit Corporation, Respondent,	)	Appeal, Appellate court Fifth District 5-87-0127
VS.	)	
ALONZIA HARRIS, et al., Petitioners.	)	Circuit Court of Cook County 86-CH-12 Honorable William H. South, Judge Presiding

O R D D R

This cause coming to be heard on the motion of the petitioners, due notice having been given to the respondent, and the court being fully advised in the premises,

IT IS ORDERED that the motion for reconsideration of this court's June 6,1988 order, denying petitioner's motion for leave to file a petition for leave to appeal instanter is denied.

IT IS FURTHER ORDERED that petitioner's request to recall and stay the mandate of the Appellate Court, Fifth District pending application for certiorari on the expiration of the period within which said application

may be filed is allowed. If certiorari is applied for, the mandate of the Appellate Court, Fifth District, shall, upon proof of such filing being made by affidavit filed with the clerk of the Appellate Court, Fifth District, be further stayed pending resolution by the United States Supreme Court of such application. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which certiorari may be sought.

J.F. Cunningham
Justice

FILED
AUG. 2,1988
SUPREME COURT CLERK

No. 5-87-0127

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ISRAELITE BIBLE CLASS, INC., An Illinois Not-for-Profit Corporation,	)	Appeal from the Circuit Court of Pulaski County.
Plaintiff-Appellee,	)	
V.	)	FILED OCT. 6,1987 WALTER T. SIMMONS
ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, An Unincorporated Association, and THE FIRST CHURCH OF ISRAEL, INC., An Illinois Not-for-Profit Corporation,	)	CLERK APPELLATE COURT 5th DIST.
	)	No. 86-CH-12
Defendants-Appellants.	)	

ORDER

This cause having been considered on motion of plaintiff-appellee, Israelite Bible Class, Inc., to supplement record on appeal, to amend brief and to dismiss appeal, and the motion of defendants-appellants for appointment of councel on appeal and the court having examined the record on appeal and being fully advised in the premises:

IT IS THEREFORE ORDERED that the motion of plaintiff-appellee to supplement record on appeal be, and the same hereby is GRANTED;

IT IS THEREFORE ORDERED that the motion of plaintiff-appellee to amend brief be, and the same hereby is GRANTED:

IT IS THEREFORE ORDERED that the motion of plaintiff-appellee to dismiss appeal be, and the same hereby is, TAKEN WITH THE CASE;

IT IS THEREFORE ORDERED that the motion of defendants-appellants for appointment of counsel on appeal be, and the same hereby is DENIED.

No. 5-87-0127

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ISRAELITE BIBLE CLASS, INC., An Illinois Not-for-Profit Corporation, Plaintiff-Appellee, VS. ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, An Unincorporated Association, and THE FIRST CHURCH OF ISRAEL, INC., An Illinois Not-for-Profit Corporation, Defendant-Appellant.	)	Appeal from the Circuit Court of Pulaski County. No. 86-CH-12 FILED JUN 19,1987

ORDER

This cause having been considered on motion of plaintiff-appellee to dismiss the appeal and the pro se response thereto of defendants-appellants and the court, being advised in the premises, finds:

That plaintiff-appellee, Israelite Bible Class, Inc., moves to dismiss the appeal of defendants-appellants, Alonzia Harris, Charles Davis, Mahalia Key, The First Church of Israel, and The First Church of Israel, Inc.,

on the basis that the notice of appeal is premature and fails to vest this court with jurisdiction as it was filed prior to the formal entry of judment as governed by Supreme Court Rule 272. (87 Ill. 2d R. 272.) Defendants in their pro se response to the motion to dismiss assert that the filing of the notice of appeal was within the 30-day time limit set forth by the trial court following its oral pronouncement of judgment. In the alternative, they seek leave to file a late notice of appeal, presumably pursuant to Supreme Court Rule 303(e). 87 Ill. 2d R 303(e);

That the perinent facts are as follows: Plaintiff broutht an action in ejement against defendants to gain possession of certain property in which it was adjudicated to be the owner pursuant to a previous judgment entered in Pulaski County No. 78-CH-5. Defendants, who were one a part of plaintiff's church and who later split from the organization, have continued to reside on the subject premises subsequent to entry of judgment in cause No. 78-CH-5. At the conclusion of a two-day hearing in the instant case, the trial court orally made findings of fact and entered judgment in favor of plaintiff. The record sheet entry for January 8,1987,

provides as follows:

> "Court reconvenes 9:15 AM. All parties present-- π case in chief continued. Witnesses for π called & cross exam --Δ ex II identified -- recess 12:15 -- WHS -- court reconvenes 1:20 P.M. -- π exhibits 1, 2, 3, 4, 5, 6, & 7 admitted -- π rests -- Δ presents case in chief -- witnesses heard -- ARGUMENT HEARD -- COURT FINDS LEGAL TITLE IN - -- Δ' GIVEN 60 DAYS TO COMPLY W/BY LAWS OF ISRAEL BIBLE CLASS, INC. -- AGREE NOT TO MOVE ANYTHING ON OR OFF ISRAELITE FARM FOR NEXT 60 DAYS -- ORDER KRUGER -- WHS --Δ'S ADVISED OF RIGHT TO APPEAL-- Δ'S EXHIBITS 1, 2, 3, 4, 5, 6 ADMITTED -- WHS [sic.]"

This hearing concluded with the following admonishment by the trial court concerning defendant's appeal rights:

> "Yeah, you have 30 days within which to file a notice of appeal and ask the Appellate Court to review the evidence and the rulings of this court for any kind of illegality of lack of substantiation or authority of the Court. Yeah, you have that, if you do that within 30 days. Well, of course, the order becomes final. So, that's why I gave you 60 instead of 30, so you got 30 days to make up your mind if you want to appeal, and you have an additional 30 days to decide if you want to try to live with the majority or not. Any other question? You're [sic] a good group and have a fine idea. You all look bright-eyed and intelligent, well-fed, clean. You've got something good going. There is just a snake crawling around and rearing its ugly head. I'm not talking about any body sic present. If there are no ther questions, why that'll be the order of the court. Now, Mr. Henry, Mr. Kruger, if you can make head or tails out of that, why put it in writing."

On January 26,1987, plaintiff's counsel drafted and submitted to the trial judge and all parties of record copies of a proposed judgment. On January 28,1987,

defendants forwarded written objections to the proposed judgment. On February 2,1987, defendants, Alonzia Harris, Charles Davis, Mahalia Key, as trustees for The First Church of Israel and The First Church of Israel, Inc., joined in a notice of appeal filed on that day. In a written order entered on February 13,1987, the trial court made rulings with respect to various objections addressed to the proposed judgment. The court directed counsel for plaintiff to modify the proposed judgment accordingly and resubmit it in accordance with local Rule 1.5 of the First Judicial Circuit. Plaintiff's counsel prepared a proposed revised judgment and cause it to be served on all parties of record. A letter dated February 16,1987, from defendants, Harris, Davis and Key, and addressed to Judge South was filed with the court on February 18,1987. In that letter, defendants acknowledge receiving a copy of the proposed revised judgment prepared by plaintiff's counsel. A written judgment appears of record signed by the trial court on February 18,1987, and filed with the clerk of the Circuit court on February 19,1987. No further notice of appeal appear of record;

That plaintiff argues that under Supreme Court Rule

272, the judgment was entered of record on February 19, 1987, when it was filed with the clerk of the circuit court after having been signed by the trial judge. This rule provides in pertinent part:

> "If at the time announcing final judgment the judge requires the submission of a form of written judgment to be signed by him, the clerk shall make a notation to that effect and the judgment becomes final only when the signed judgment is filed."

The record sheet entry for January 8,1987, as well as the trial judge's oral pronouncements on that date reflect that a written judgment was to be prepared by plaintiff's counsel. Due to the need to modify and revise the initial proposed judgment, the final judgment was not entered until February 19,1987, when the judgment as modified had been signed by the trial judge and entered of record. Since this date commenced the 30-day appeal period, plaintiff argues that the notice of appeal is premature on its face and fails to vest this court with jurisdiction;

That, generally, the announcement of judgment in a civil proceeding is not subject to attack by motion, cannot be appealed nor enforced. (Archer Daniels Midland Company V. Barth (1984), 103 Ill. 2d 536 470 N.E. 2d 290) A notice of appeal filed prior to the entry of a final written judgment, where one is required by the

trial court, is premature and fails to vest the appellate court with jurisdication. In re Marriage of Roberts (1980), 84 Ill. App. 3d 538, 406 N.E. 2d 1;

That defendants in their response to the motion to dismiss do not quarrel with this jurisdictional analysis; they contend that their notice of appeal should be regarded as timely, because they filed it within the time specified by the trial court at the conclusion of trial;

The admonishment with respect to the 30-day appeal period is somewhat ambiguous as it implies that defendants must file their notice of appeal within 30 days even though the oral announcement of judgment could not be attacked by motion, appealed from or enforced until after it was reduced to writing. Archer Daniels Midland Company;

That the appellate court in certain circumstances has accepted jurisdiction over an appeal where the trial court impermissibly extended the time for filing an appeal. (See In re Rauch (1977), 45 Ill. App. 3d 74, 359 N.E. 2d 894.) In Rauch, the reviewing court concluded that it was properly vested with jurisdiction to review an order terminating the parental rights of appellants based upon a notice of appeal filed more than 30 days

after entry of the final order, but pursuant to an improper order of the trial court extending the time for filing the notice of appeal where the extension of time was suggested by an assistant State's Attorney in open court. In support of its conclusion, the reviewing court noted that the end of justice would be better served by permitting the appeal to proceed where the jurisdictional defect was the product of reliance by appellants upon actions taken by appellee. In contrast, the jurisdictional defect presented here stems from an improper admonishment of the trial court which essentially limited the time within which to file a notice of appeal to a 30-day period commencing and expiring prior to entry of final judgment. Defendants, appearing pro se, relied on that admonishment and acted in good faith in filing their notice of appeal at a time which proved to be premature. It must be noted that unlike the situation presented in In re Rauch, plaintiff here took no action to induce the trial court to improperly limit the applicable appeal period;

That this court stated as a general proposition in In re Marriage of Morse (1986), 143 Ill. App. 3d 849, 493 N.E. 2d 1088, that ambiquities with respect to

appellate jurisdiction should be resolved in favor of review. Here, the trial court created a jurisdictional ambiguity by incorrectly admonishing defendants of the time within which they were to file their notices of appeal. Although pro se litigants are presumed to know and are expected to follow the law and legal procedure, the instant case involves reliance on an apparant misstatement of law by the court. While a competent attorney would have recognized the apparent error made by the trial court, it would be unrealistic and overly harsh to expect a pro se litigant to recognize it as well. It would appear that the interest of justice would be better served by allowing the appeal to go forward where the jurisdictional defect is the product of reliance by pro se litigants upon the admonishment of the trial court;

That a further point in opposition to the motion to dismiss raised by defendants is that plaintiff has waived the argument of appellate jurisdiction by waiting two months after the filing of the notice of appeal before bringing the alleged defect to the attention of the court. This argument is without merit as a reviewing court has a duty to consider its jurisdiction prior to considering an appeal on its merits. Sizer V. Lotus Grain & Coal Co.,

(1979), 70 Ill. App. 3d 739, 388 N.E. 2d 1274;

That a final point not raised by either party concerns the jurisdictional issue of whether The First Church of Israel, an Unincorporated Association, and The First Church of Israel, Inc., an Illinois Not-for-Profit Corporation, have standing to prosecute this appeal where the notice of appeal collectively refers to all defendant 's including these entities, as appellant and the notice of appeal was jointly signed by defendants Harris, Davis, and Key, who apparently are not licensed to practice law. The notice of appeal states in pertinent part:

> "Defendant Notice of Appeal"
> Judgment of order issues on 8th day of January, 1987. Alonzia Harris, Charles Davis, Mahalia Key, Trustees of The First Church of Israel, an Unincorporated Association and The First Church of Israel, Inc., hereby petitions sic the Appellate Court for review of order issued the 8th day of January, 1987.
>
> Trustees
> /s/ Alonzia Harris
> /s/ Charles Davis
> /s/ Mahalia Key

A problem exists with respect to the appeal of the unincorporated Association and the Not-for-Profit corporation where that notice of appeal was filed by persons apparently not authorized to practice law. This court held in Midwest Home Savings & Loan Association V. Ridgewood, Inc., (1984), 123 Ill. App. 3d 1001, 463 N.E. 2d

909, that a notice of appeal filed by a corporation secretary not authorized to practice law in violation of "An Act to prohibit corporation from practicing law etc." (Ill. Rev. Stat. 1985, ch. 32, par. 411 et seq.) and incapable of vesting the appellate court with jurisdiction. This holding is controlling to the extent that the notice of appeal purports to be on behalf of defendant, The First Church of Israel, Inc., while corporations may appear through corporate officers is small claims matters (Ill. Rev. Stat. 1985, ch 110, par 2-416), this exception is not applicable here. Moreover, the same analysis should apply with respect to the unincorporated Association, The First Church of Israel.

IT IS THEREFORE ORDERED that plaintiff's motion to dismiss appeal shall be, and the same hereby is DENIED.

IT IS FURTHER ORDERED that defendants, The First Church of Israel and The First Church of Israel, Inc., within 21 days of the entry of this order, show cause why the appeal should not be dismissed.

No. 5-87-0127

IN THE

APPELLATE COURT

STATE OF ILLINOIS

FIFTH JUDICIAL DISTRICT

ISRAELITE BIBLE CLASS, INC., An Illinois Not-for-Profit Corporation, Plaintiff/Appellee, VS. ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, An Unincorporated Association, and THE FIRST CHURCH OF ISRAEL Not-for-Profit Corporation, Defendants/Appellants.	Appeal from the Circuit Court First Judicial Circuit Pulaski County, Illinois No. 86-CH-12 Honorable William H. South Presiding Judge

MOTION TO SHOW CAUSE WHY DEFENDANTS APPEAL SHOULD NOT BE DISMISS

Come now the Defendants/Appellants, Alonzia Harris, Charles Davis, and Mahalia Key. Trustees of The First Church of Israel, and The First Church of Israel, Inc., An Illinois Not-for-Profit Corporation, representing ourselves and our Organization, moving the Court not to

dismiss this Appeal, No. 5-87-0127, and in support thereof states as follow:

1. That the Deputy Sheriff of Pulaski County served all three Defendants on or about June 6,1986 with a summons. The heading at the tip of that summons read as follows:

Israelite Bible Class, Inc., An Illinois Not-for-Profit Corporation, Plaintiff, VS. Lucius Casey, Jr., Alonzia Harris, Charles Davis, Mahalia Key, The First Church of Israel, An Unincorporated Association, and The First Church of Israel, Inc., An Illinois Not-for-Profit Corporation, Defendants.

2. Defendants tried repeately to obtain an attorney to answer the summons and to represent them and The First Church of Israel An Religious Corporation, when Alonzia Harris, Charles Davis, Mahalia Key, could not get an attorney to represent us, and answer the summons that we recieved on or about June 6,1986, within 30 days after service of the summons in cause 86-CH-12. Defendants on July 12,1986 file with the Clerk of Pulaski County an answer to the summons that we prepared overselves with the help from the God of Israel leading us to information we was seekking. Defendants on December 16,1986 did file with the Clerk of Pulaski County an Amend answer to

the summons. Defendants did not want a judgment or decree by default taken against them for the relief asked in the complaint, for failure to answer the summons within 30 days.

3. After Defendants answer their summons, Alonzia Harris, Charles Davis, and Mahalia Key did continue to seek an attorney to represent us and The First Church of Israel An Religious Unincorporated Association, and The First Church of Israel, Religious Incorporation. Each attorney that the Defendants contact did not want to take our case. Some of the attorneys stated it is to much time involved; some said they would! but their case load is to heavy; some said our case is to complicated; others said they just did not want the case. These are just some of the attorneys that Defendants have gone to, trying to obtain an attorney to represent Defendants in Cause 86-CH-12. Mr. James Flummer, Attorney at law, Cairo; Mr. Gary Sibley, Attorney at law, Carbondale; Collina & Collina, Attorney at law, Cairo, Il; Holland & Holland, Attorney at law, Cairo, Il; Mr. Meehan W.M. Francis, Attorney at law, Cairo, Ill; Mr. Michael O'Shea Jr., Attorney at law, Cairo, Ill; Mrs. Gloria Thurston, Attorney at law, Pulaski, Il. Ms. Mary Lou Shaner, of Carbondale, Il; Mr. Bruce E. Warren, Attorney at law,

Carbondale, Il. We have also tried to obtain Counsel or information about counsel from the United Front in Cairo, Il, Defendants have also tried to obtain counsel at the Land of Lincoln Legal Assistance Foundation, of Carbondale. All of these Attorneys for their reason have refuse to represent us in our case 86-CH-12. Defendants in 1979, obtained Mr. Clinton J. Thurston of Cairo, Il. to represent us in Cause 78-CH-5 and in 1982, Cause 81-CH-3. Mr. Clinton Thurston died in the early part of 1986, leaving Defendants without counsel. Mr. James Flummer who took on Mr. Thurston cases, decline to represent us in cause 86-CH-12.

4. Defendants, Alonzia Harris, Charles Davis, and Mahalia Key appeared in the Pulaski County Court house on January 7th & 8th without the representation of an Attorney, not by choice or an attempt to practice law, but to defend ourselves and our Organization, because we did not want to be evicted from our homes and lose the land thet belong to The First Church of Israel.

5. Defendants Alonzia Harris, Charles Davis, and Mahalia Key still not being represented by an Attorney, filed a Notice of Appeal in the Circuit Court of Pulaski County, not by choice or in an attempt to practice law,

but to defend ourselves and our Religious Organization. The Constitution of the State of Illinois Article 6, the Judiciary Section (6) Appellate Court-Jurisdiction States as follow:

"Appeal from final Judgment of a Circuit Court are a matter of right of the Appellate Court in the Judicial District in which is located except in case appealable directly to the Supreme Court and except that after a trial on the merits in criminal case, there be no appeal from a judgment of acquittal. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgment of Circuit Courts. The Appellate Court may exercise original Juridiction when necessary to the complete determination of any case on review. The Appellate Court shall have such powers of direct review of administrative action as provided by law."

6. In the case that the Appellate Court of Illinois Fifth District have brought to the attention of the Plaintiff and the Defendants in the June 19,1987 Order, Midwest Home Saving & Loan Association VS. Ridgewood, Inc. (1984), 123 Il. App. 3d 1001,463 N.E. 2d 909.

The Court said: Corporate Defendants could not file a valid Notice of Appeal in its own behalf without the advice and service of an Attorney, and because

corporate Defendants Notice of Appeal was signed on behalf of the Corporation by Secretary of the Corporation and did not indicate that counsel represented the Corporation in the preparation and filing of the Notice of Appeal, the Appeal would be dismissed.

The Defendants, Alonzia Harris, Charles Davis, and Mahalia Key, Trustees of The First Church of Israel, An Religious Unincorporated Association, and The First Church of Israel, An Religious, Illinois Not-for-Profit Corporation, have tried repeatedly to obtain advice and service of an Attorney that would represent us in Cause 86-CH-12. Defendants not by choice or in an attempt to practice law, but in an effort to get an unreasonable and unjust judgment of the Trial Court overturned, did file a Notice of Appeal.

7. In the Court of Appeal of Minnesota July 8, 1986, Donna Mae Gonsior, Relator, V. Alternative Staffing, Inc., Respondent, Commissioner of Jobs and Training, Respondent. 390 N.W. 2d 801 (Minn. App. 1986). The Court Said: Although we note dismissal of proceeding commenced by a non-lawyer is a drastic remedy. "Niklaus V. Abel Construction Co., 164 Neb. 842, 83 N.W. 2d 904, 911 (1957), the purpose of the rule (Ill. Rev.

Stat. 1985, ch. 32, par. 411 et seg.) is to protect the public. Gardner V. Conway, 234, Minn. 468,481 48 N.W. 2d 788, 796 (1951). Thus, one Court reversed the dismissal of an action where an Attorney was disbarred after he filed a party's complaint. Since the party never consciously elected to be represented a laymen. Janiczed, 89, Ill. Dec. at 675,481 N.E. 2d 27. In the situation Gonisor 390 N.W. 2d 801 (Minn. App. 1986), The Court Said: Ordinarily, therefore, we would dismiss Gonsior Appeal due to her representation by a non-Attorney, however, we note the issue of Gonsior's representation by a non-Attorney was previously raised in the Commissioners memorandum to the Supreme Court when Gonsior Appealed this Court's discharge of her writ. The Supreme Court did not dismiss Gonsior's Appeal due to her representation by a non-Attorney, and we must be guided by the Supreme Court's Action in this instance.

8. In 1979, when the members of the Israelite Bible Class took the Defendants to Court in cause 78-CH-5, concerning the same 450 acres real estate, the same two groups of people as in cause 86-CH-12. The Defendants appealed in Court at that time with representation, Mr. Clinton Thurston Attorney at Law, Cairo, Ill. Mr Thurston represents Alonzia Harris, Charles

Davis, Mahalia Key and The First Church of Israel, An Religious Unincorporated Association, and The First Church of Israel, An Religious Illinois Not-for-Profit Corporation, and its members up until the time of his death in early part of 1986.

9. It would be a drastic remedy to dismiss the Defendants Appeal, when we had obtain an attorney to defend us in these matters and after his death, we would not find another attorney to represent us and our Religious Organization in cause 86-CH-12. If the purpose of the rule (Ill. Rev. Stat. 1985, ch.32, par 411 et seg) is to protect the public, it is inappropriate in cause 86-CH-12, and cause 5-87-0127. If the Court dismiss the Defendants Notice of Appeal, not only would such a result clearly penalize Alonzia Harris, Charles Davis, Mahalia Key and The First Church of Israel, An Religious Unincorporated Association, and The First Church of Israel, Inc., An Religious Illinois Not-for-Profit Corporation, but it also would overlook the fact that the Defendants did secure the services of a licensed attorney to represent us in cause 78-CH-5 and 81-CH-3 concerning the same 450 acreas real estate and the title, and after the death of our late attorney Mr. Clinton Thurston we tried repeately to obtain the

service of a license Attorney to represent us in cause 86-CH-12, and cause 5-87-0127.

10. We the Trustees of a Religious Organization, Alonzia Harris, Charles Davis, Mahalia Key have appeared before the Circuit Court of Pulaski County without the representation of a license Attorney, and Appeal to the Appellate Court without the representation of a license Attorney, not by choice or in an attempt to practice Law, but due to the length of time from 1979 to 1987 the Plaintiff have had the Defendants in and out of Court in cause 78-CH-5, 81-CH-3 and 86-CH-12. And due to the death of our late Attorney Clinton Thurston and because of the lack of money, we were unable to obtain an Attorney, we are without a license Attorney.

11. In the Appellate Court of Illinois First District, Fourth Division. June 27,1985, George A. Janiczed Plaintiff/Appellant V. Dover Management Company; New Plan Realty Company, Donald Wilson; and O'Brien Corporation, Defendants-Appellees. The Court Said: (481 N.E. 2d 25), Dismissal of proceedings brought by a non-Attorney in a representative capacity is a drastic remedy and may not be required in all cases. (Niklaus V. Abel Construction Co.) (1957), 164 Neb. 182, 852, 83 N.W. 2d 904, 911.)

12. If the Appellate Court should dismiss the Defendants Alonzia Harris, Charles Davis, Mahalia Key Trustees of The First Church of Israel, An Religious Unincorporated Association, and The first Church of Israel, Inc., An Religious Illinois Not-for-Profit Corporation, Notice of Appeal it would be inconsistent with the Constitution of the State of Illinois Article 1, Bill of Rights Section 12. Right to remedy and Justice, which states as follows:

Every person shall find a certain remedy in the law for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

13. The Supervisory Authority of the Appellate Court is needed in order to reach the real issue in this case.

The real issue is the 450 acres real estate, that belong to The First Church of Israel, An Religious Association, and the Warranty Deed of 1978 that convey the 450 acreas real estate from The First Church of Israel to Israelite Bible Class, Inc., when in fact, in 1978, the Israelite Bible Class, Inc., did not exist as a Incorporation at the time of conveyance of the real estate. The title to the entire 450 acres real estate was awarded by the Trial Court to the Plaintiff in an

unreasonable and unjust judgment of the Trial Court. The Fact remains that unless the Appellate Court exercises its Supervisory Authority and decides the real issue in case 86-CH-12, the Defendants and the members that belong to this Religious Organization will be subject to the unjust judgment of the Trial Court.

14. If the Appellate Court dismiss the Defendants Notice of Appeal, because of our Religious Organization not being represented by a license Attorney, it would cause men, women, children and elderly people to be evicted and driven out into a world to become destitute, and deprived of life, liberty, and property. Under Article 1, Bill of Rights, Section 12. Right to Remedy and Justice States: "Every person shall find a certain remedy in the law for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly."

Defendants, Alonzia Harris, Charles Davis, Mahalia Key, and The First Church of Israel, An Religious Association and The First Church of Israel, An Religious Not-for-Profit Corporation, pray that this reviewing Court will not deny Defendants and our Religious

Organization, their Constitutional Rights without due process of law.

15. Defendants, Alonzia Harris, Charles Davis, Mahalia Key and the members of The First Church of Israel, An Religious Association and The First Church of Israel, An Religious Not-for-Profit Corporation, have adhere to the original teaching of our late spiritual teacher and founder of the Bible Study Class, Mr. Lucius Casey, Sr., Teacher of the Old Testement, King James Version, concerning the God of Abraham, Isaac, and Jacob laws on the principles of right and wrong in governing God's people in moral values, fairness, and integrity.

16. Defendants By-laws that governs its members are bases upon the word of the God of Israel and in compleance with the Constitution of the United States of America. Defendants not being attorneys have tried to show great respect for the law and rules of this Court, and have tried to comply to all the Court procedures.

WHEREFORE, Defendants Alonzia Harris, Charles Davis, Mahalia Key and The First Church of Israel An Religious Association and The First Church of Israel Not-for-Profit Corporation, pray that this Court will accept our Notice of Appeal and review this cause Israelite Bible Class, Inc., V. Alonzia Harris, et al., 86-CH-12,

and 5-87-0127.

Alonzia Harris, Charles Davis, Mahalia Key, The First Church of Israel, An Unincorporated Association, and The First Church of Israel, Inc.

Alonzia Harris

Charles Davis

Mahalia Key

No. 5-87-0127

IN THE

APPELLATE COURT

STATE OF ILLINOIS

FIFTH JUDICIAL DISTRICT

ISRAELITE BIBLE CLASS, INC., An Illinois Not-for-Profit Corporation,	)	Appeal from the Circuit Court First Judicial Circuit Pulaski County, Illinois
Plaintiff/Appellee,	)	
VS.	)	No. 86-CH-12
ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, An Unincorporated Association, and THE FIRST CHURCH OF ISRAEL, INC., An Illinois Not-for-Profit Corporation,	)	Honorable William H. South Presiding Judge
Defendants/Appellants.	)	

AFFIDAVIT

STATE OF ILLINOIS)
SS.
COUNTY OF PULASKI)

Comes now the affiants Alonzia Harris, Charles Davis, Mahalia Key, Trustees of The First Church of Israel, An

Religious Unincorporated Association, and The First Church of Israel, An Religious Not-for-Profit Corporation, representing ourselves and our Organization in cause No. 86-CH-12, being first duly sworn upon their oath doth depose and states as follows:

1. That at all relevant times Affiants were trustees representing ourselves and our Organization The First Church of Israel, in the cause Israelite Bible Class, Inc., V. Alonzia Harris, et al.,86-CH-12, venued in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois, and therefore has personal knowledge as to the pleading filed and proceeding conducted in said cause.

2. That this Affidavit is submitted in support of the Affiants motion to Show Cause why Defendents Appeal should not be dismissed.

3. Affiants states, that we have tried to obtain a license Attorney to represent us and our Religious Organization in cause 86-CH-12, and 5-87-0127.

4. Affiants states, that we contacted, James Flummer, Attorney at Law, Cairo, Ill; Mr. Gary Sibley, Attorney at Law, Carbondale, Ill; Collina & Collina, Attorney at Law, Cairo, Il; Holland & Holland, Attorney at Law, Cairo, Ill; Mr. Meehan WM Francis, Attorney at Law, Cairo, Ill; Mr.

Michael O'Shea Jr., Attorney at Law, Cairo, Ill; Mrs. Gloria Thurston, Attorney at Law, Pulaski County, Ill; Mr. Bruce Warren, Attorney at Law, Carbondale, Ill; United Front in Cairo, Ill; Land of Lincoln Legal Assistance Foundation, of Carbondale. Seeking the advice and service of a license Attorney to represent Alonzia Harris, Charles Davis, Mahalia Key, and The First Church of Israel, An Religious Association and The First Church of Israel, An Religious Not-for-Profit Corporation in cause 86-CH-12.

5. Affiants states, do to the death of Affiants late Attorney Mr. Clinton Thurston and because of the lack of money, were not able to obtain an Attorney. Affiants are without a license Attorney, not by choice or in an attempt to practice law, but in an effort to get an unreasonable and unjust judgment of the Trial Court overturned, did file a Notice of Appeal.

6. The further Affiants saith naught.

Alonzia Harris

Charles Davis

Mahalia Key

Subscribed and sworn to before me this 3rd day of July 1987.

Bernice Bledsoe
Notary Public

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, AN UNINCORPORATED ASSOC., AND THE FIRST CHURCH OF ISRAEL, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

Petitioners,

V.

ISRAELITE BIBLE CLASS, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

Respondent.

MEMORANDUM

Before the Court is Alonzia Harris, Charles Davis, Mahalia Key, praying that the Supreme Court of The United States October Term, 1988 issue a Writ of Certiorari to review the judgment of the Illinois Appellate Court for the Fifth District.

The Orders that was handed down by the

Appellate Court and filed dated August 11, 1987, October 6, 1987, and June 19, 1987 bare no name or signatures of any justice that determine the case. The Order that was handed down by the Appellate Court and filed dated March 9, 1988 bared the names of justices, but no signature of any justices that made the determination of that case.

These Orders were use in the Peitioner's Petition for Writ of Certiorari as Appendix, August 11, 1987 Order appear as Appendix B-1-9, October 6, 1987 Order appear as Appendix G-1-2, June 19, 1987 Order appear as Appendix H-1-10, the March 9, 1988 Order appear as Appendix C-1-8.

Alonzia Davis
Charles Davis
Mahalia Key

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, AN UNINCORPORATED ASSOC., AND THE FIRST CHURCH OF ISRAEL, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

Petitioners,

V.

ISRAELITE BIBLE CLASS, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

RESPONDENT.

AFFIDAVIT IN SUPPORT OF PETITIONERS APPLICATION FOR WRIT OF CERTIORARI

STATE OF ILLINOIS)
S.S.
COUNTY OF PULASKI)

Now comes the Affiants Alonzia Harris, Charles Davis, and Mahalia Key in the above entitle cause, being first duly sworn upon their oath doth depose and states as follow:

1. That the facts set forth herein are based upon the personal knowledge of Affiants and if called as a witness we can competently testify thereto.

2. That Affiants have filed with the United States Supreme Court an Application for Writ of Certiorai.

3. That Affiants complied with United States Supreme Court Rule 17-21 Petition for Certiorari.

4. That Affiants forewarded three copies of their Application for Writ of Certiorari to Plaintiffs Attorney of record Mr. Paul Henry, with copies of all papers filed in the United States Supreme Court with proof of service.

5. The further Affiants saith naught.

Alonzia Harris

Charles Davis

Mahalia Ray

Subscribed and sworn to before me this

28th day of November 1988.

Notary Public

My Commission Expires Nov. 20, 1989

Supreme Court, U.S.
FILED
JAN 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-925

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALONZIA HARRIS, CHARLES DAVIS,
AND MAHALIA KEY,

Petitioners,

V.

ISRAELITE BIBLE CLASS, INC.,
AN ILLINOIS NOT-FOR-PROFIT
CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE APPELLATE COURT OF ILLINOIS,
FIFTH JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PAUL F. HENRY
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P. O. Box 568
Metropolis, IL 62960
Phone (618) 524-9302

NO. 88-925

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALONZIA HARRIS, CHARLES DAVIS,
AND MAHALIA KEY,

Petitioners,

V.

ISRAELITE BIBLE CLASS, INC.,
AN ILLINOIS NOT-FOR-PROFIT
CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE APPELLATE COURT OF ILLINOIS,
FIFTH JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

ISSUES PRESENTED FOR REVIEW

A. WHETHER THE COURT LACKS JURISDICTION ON THE PETITION FOR WRIT OF CERTIORARI DUE TO PETITIONERS' UNTIMELY FILING?

B. WHETHER THE PETITION FOR WRIT OF CERTIORARI FILED BY PETITIONERS IN THEIR CAPACITY AS INDIVIDUALS ONLY IS BARRED BY THE DOCTRINE OF RES JUDICATA?

C. WHETHER THE ADJUDICATION OF PROPERTY RIGHTS BY THE TRIAL COURT IN ACCORDANCE WITH "NEUTRAL PRINCIPLES" WAS CONSISTENT WITH PETITIONERS' FREE EXERCISE OF RELIGION AS GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

D. WHETHER THE DENIAL OF PETITIONER'S REQUEST FOR APPOINTMENT OF COUNSEL COMPORTED WITH FUNDAMENTAL RIGHT OF DUE PROCESS AS GUARANTEED BY THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES?

II.

PARTIES TO THE PROCEEDING

PETITIONERS:

ALONZIA HARRIS

CHARLES DAVIS

MAHALIA KEY

In their individual capacities only.

No Petition for Writ of Certiorari has been filed on behalf of The First Church of Israel, Inc., an Illinois Not-For-Profit Corporation nor on behalf of The First Church of Israel, an Unincorporated Association.

RESPONDENT:

ISRAELITE BIBLE CLASS, INC.,
AN ILLINOIS NOT-FOR-PROFIT
CORPORATION

III.

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IV.

CITATION OF LOWER COURT DECISIONS

The Pending Petition seeks issuance of a Writ of Certiorari to the Appellate Court of Illinois, First Judicial District. Petitioner's Appeal to the Appellate Court of Illinois was dismissed without formal opinion as provided in Illinois Supreme Court Rule 23. Petitioner's Motion For Leave To Appeal To the Illinois Supreme Court was similarly denied without formal opinion. There are, therefore, no reported decisions or opinions issued in the Courts below.

V.

JURISDICTIONAL STATEMENT

A. DATE OF ORDER:

On August 11, 1987, the Appellate Court of Illinois, Fifth Judicial District, entered an Order providing in pertinent part, for the dismissal of the Appeal of The First Church of Israel, an Unincorporated Association and The First Church of Israel, Inc., an Illinois Not-For-Profit Corporation. That Order did not dispose of the issues raised on Appeal as to all parties. On March 9, 1988, the Appellate Court of Illinois entered an Order dismissing the Appeal as to all remaining parties.

B. PETITION FOR LEAVE TO APPEAL TO ILLINOIS SUPREME COURT:

Petitioners failed to timely file their Petition For Leave to Appeal

to the Illinois Supreme Court. The Petitioner's filed a Motion For Leave to Appeal Instanter which was denied by the Illinois Supreme Court by Order entered June 6, 1988.

C. **MOTION FOR REHEARING:**

Through counsel of record, Larry Beard, Petitioners filed a Motion For Reconsideration which was denied by Order of the Illinois Supreme Court on July 5, 1988. Without authority of Rule the Petitioners thereafter filed a duplicitous Motion To Reconsider which was summarily denied by Order of the Illinois Supreme Court entered August 1, 1988.

D. **STATUTES CONFERRING JURISDICTION:**

The statutory provisions conferring jurisdiction on this court to review the decision in question by Writ of Certiorari is 28 U.S.C., Section 1257(3). The statute establishing the jurisdictional time within which the Petition For

Writ Of Certiorari was to have been filed is 28 U.S.C., Section 2101 (c). Supreme Court Rule 20.4 defines when the time commences for filing a Petition For Writ Of Certiorari.

E. The Court is without jurisdiction because the Petition For Writ of Certiorari was effectively filed on October 28, 1988, being more than ninety (90) days following July 5, 1988, the date the Illinois Supreme Court Court denied the Petitioner's Motion For Rehearing. Respondent contends that the time for filing a Petition For Writ Of Certiorari is not tolled by successive repetitive Motions for Reconsideration.

VI.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U. S. CONSTITUTION - AMENDMENT I

> Congress shall make no law respecting an establishing of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. CONSTITUTION - AMENDMENT V

> No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U. S. CONSTITUTION - AMENDMENT VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, ... and to have the Assistance of Counsel for his defense.

U. S. CONSTITUTION - AMENDMENT XIV

> Section 1. ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C. SECTION 1257 (3)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

...

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

28 U.S.C. SECTION 2101(c)

...

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

SUPREME COURT RULE 20.4

4. The time for filing a petition for writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice). However, if a petition for rehearing is timely filed by any party in the case, the time for filing the petition for writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or of the entry of a subsequent judgment entered on the rehearing.

ILLINOIS SUPREME COURT RULE 33 (7)

7. The Clerk shall not accept for filing any document presented in a form not in compliance with this Rule, but shall return it indicating to the defaulting party wherein he has failed to comply; the filing, however, shall not thereby be deemed untimely provided that new and proper copies are promptly substituted. If the Court shall find that the provisions of this Rule have not been adhered to, it may impose, in its discretion, appropriate sanctions including but not limited to dismissal of the action, imposition of costs, or disciplinary sanction upon counsel. See also Rule 38 respecting oral argument.

VII

STATEMENT OF CASE

In the beginning, Lucius Casey, Sr. organized and incorporated The Israelite Bible Class, Inc. as a Not-For-Profit Corporation, on March 11, 1953. (R. 117). The corporation was strictly a congregational entity conceived and organized for religious purposes. The Israelite Bible Class, Inc. was not associated with any other general denomination or ecclesiastical entity. Originally, the congregation was centered in the Chicago vicinity; however, shortly after formal incorporation the group began to purchase various parcels of property in Pulaski County, Illinois, which eventually became known as the "Israelite Farm". (R. 207).

In 1972 a meeting of the corporate directors and membership of The Israelite

Bible Class was held in Chicago, Illinois, at which time it was decided to change the name of The Israelite Bible Class, Inc. to The First Church of Israel (R. 78; R. 176-177). Following the adoption of the new name, and more particularly on or about March 18, 1972, the corporate authorities of The Israelite Bible Class, Inc. executed a corporate warranty deed conveying the corporation's right, title and interest in the farm to seven (7) named individuals as Trustees of The First Church of Israel, an Unincorporated Association (Plaintiff's Exhibit #5). The corporate charter of The Israelite Bible Class, Inc. was then allowed to lapse for failure to file annual reports as required by law. (R. 6; Plaintiff's Exhibit #3). Though the name of the congregation was changed, the membership, corporate directors, by-laws, beliefs, and tenets

remained constant. (R. 120; R. 175-176; R. 198).

Subsequent to the name change during 1972, membership in the Unincorporated Association then known as The First Church of Israel grew but new members began to infiltrate the organization not having complied with the applicable by-laws. Defendants, Charles Davis and Mahalia Key, were two such members. (R. 173; 199; 139-140). In 1978, a meeting of the membership was held on the Israelite Farm to address the divergence from the principles and philosophies of the original organization. At the meeting, the body politic of the congregation voted overwhelmingly to revive the name and existence of the original congregation and to retake the name of The Israelite Bible Class, Inc. (R. 132-133; R. 165-166; R. 176-179). Nearly all the congregational members of the association

elected and consented to the reversion back to the original organizational structure and further voted to have the title of the real estate formally revested in the corporation. (R. 132-133; R. 165-166; R. 176-179).

Pursuant to the decision of the congregational membership, a warranty deed was executed on July 16, 1978, by six (6) of the Trustees reconveying the farm property back into the name of The Israelite Bible Class, Inc. (Plaintiff's Exhibit #2). The remaining named Trustee, Lucius Casey, Jr., reconveyed his title interest in the property to the corporation by virtue of a deed executed on January 18, 1981. (Plaintiff's Exhibit #6). At the time of the conveyance executed on July 16, 1978, The Israelite Bible Class, Inc. had not been reinstated and restored to its prior corporate standing. This was accomplished by entry of

a Court Order in Cook County vacating the judicial Decree of Dissolution (Plaintiff's Exhibit #3), and by the subsequent issuance of a certificate of reinstatement by the Illinois Secretary of State. (C 16 - Exhibit B).

On July 6, 1978, and prior to the reconveyance to The Israelite Bible Class, Inc., certain dissident members of the congregation procured a charter of incorporation under the Illinois Not-For-Profit Corporation Act for an entity known as The First Church of Israel, Inc. (R. 9). The congregational members who did not revert back to the original corporation became members in the newly created First Church of Israel, Incorporated. (R. 30). Subsequent to incorporation, the Unincorporated Association known as The First Church of Israel ceased to have an independent, autonomous existence. (R. 30; R. 35; R. 143-150).

In an effort to clear apparent conflicts of title, The Israelite Bible Class, Inc. instituted Cause 78-CH-5 in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois. On March 1, 1982, an Order was entered in said cause pursuant the agreement and stipulation of the parties establishing, in pertinent part, that the individuals known as Mahalia Key, Alonzo Harris, and Charles Davis had no claim, as individuals in the Israelite Farm. (R. 9-10). That Order also established that The First Church of Israel, Inc., as a corporate entity, had no title or claim to the property. (R. 9-10). Due to lack of jurisdiction over each alleged member of the Unincorporated Association, the prior Order, however, reserved ruling on any claim the named Defendants may have been able to raise by virtue of membership in The First Church of Israel, an Unincorporated Association. (R. 9-10).

The trial court found superior title in Plaintiff and granted relief sounding in Ejectment against all named Defendants. (C. 87-94). An appeal to the Appellate Court of Illinois, Fifth Judicial District, was taken by Alonzo Harris, Charles Davis, and Mahalia Key as Trustees of The First Church of Israel, an Unincorporated Association, and the First Church of Israel, Inc., an Illinois Not-For-Profit Corporation.

On August 11, 1987, the Appellate Court of Illinois, Fifth Judicial District, entered an Order Dismissing the Appeal of The First Church of Israel, an Unincorporated Association, and The First Church of Israel, Inc., an Illinois Not-For-Profit Corporation, due to an absence of jurisdiction based on the failure of those entities to file an effective Notice of Appeal. (A-19). The Notice of Appeal filed on behalf of

the Corporation and Association was executed by Alonzo Harris, Charles Davis, and Mahalia Key, none of whom were duly admitted to practice law in the State of Illinois, only in their capacities as Trustees of The First Church of Israel. Finding the Notice of Appeal as filed to be violative of the State's prohibition against the uanauthorized practice of law, the Court deemed the Notice nullity. Subsequently on March 9, 1988, the Illinois Appeallate Court, Fifth Judicial District dismissed the Appeal as to the remaining individual Defendants, Alonzo Harris, Charles Davis, and Mahalia Key, because no proper Notice was filed on their individual behalfs.

Although represented by counsel the Defendants failed to timely file a Petition For Leave To Appeal to the Illinois Supreme Court. On June 6, 1988, the Illinois Supreme Court entered an Order

denying the Defendants' Motion For Leave to File Petition For Leave to Appeal Instanter. Through their attorney, Larry Beard, the Defendants then filed a Motion To Reconsider Motion For Leave to File Petition Instanter which was denied on July 5, 1988. (A-53).

Although not countenanced by rule, on July 19, 1988, the Defendants refiled their Motion To Reconsider in a "Pro Se" capacity. The repetitive "Pro Se" Motion was summarily denied by Order entered August 2, 1988, which Order stayed issuacne of the mandate of the Appellate Court pending resolution of Defendants' application to the United States Supreme Court for a Writ of Certiorari. (A-56).

Effective October 28, 1988, the Defendants filed in the United States Supreme Court, a Petition For Writ of Certiorari to the Appellate Court of Illinois, Fifth Judicial District.

VIII.

ARGUMENT

(A)

THE COURT LACKS JURISDICTION ON THE PETITION FOR WRIT OF CERTIORARI DUE TO PETITIONERS' UNTIMELY FILING

The final Order which Petitioners' seek to review by Writ of Certiorari was entered by the Appellate Court of Illinois, Fifth Judicial District on March 9, 1988 (A-44). The Appellate Court then entered an Order on April 5, 1988, denying Petitioners' request for rehearing. (A-51).

The Petitioners failed to file a Petition for Leave to Appeal to the Illinois Supreme Court within the time prescribed by Illinois Supreme Court Rule

315. On June 5, 1988, the Illinois Supreme Court entered an Order denying Petitioners' Motion For Leave To File Petition For Leave to Appeal Instanter. (A-52). Through counsel of record, Larry Beard, the Petitioners filed a Petition to Reconsider which was duly denied by the Illinois Supreme Court on July 5, 1988. (A-53).

Subsequent to entry of the Order denying their Petition to Reconsider the Petitioners, pro se, filed a repetitive Motion to Reconsider concurrent with a Motion to Withdraw filed by their counsel of record. The second Motion to Reconsider was summarily denied by the Illinois Supreme Court by Order entered August 2, 1988. (A-56).

Neither the Illinois Code of Civil Procedure nor the Illinois Supreme Court Rules countenance the filing of repetitive Motions to Reconsider. Indeed, in the

case of Sears v. Sears, 85 Ill.2d 253, 422 N.E.2d 610, 52 Ill.Dec. 608 (1981), the Illinois Supreme Court condemned the practice of filing repetitive post-trial motions in the trial court:

> There is no provision in the Civil Practice Act or the Supreme Court Rules which permits a losing litigant to return to the trial court indefinitely, hoping for a change of heart or a more sympathetic judge...There must be finality, a time when the case in the trial court is really over and the loser must appeal or give up. Successive post judgment motions interfere with policy and justice is not served by permitting the losing party to string out his attack on a judgment over a period of months, one argument at a time, or to make the first motion a rehearsal for the real thing next month. (52 Ill.Dec. 610-611).

In the present case Petitioners seek review by Writ of Certiorari pursuant to 28 U.S.C., Section 1257 (3). The time parameters for filing a Petition For Writ Of Certiorari are specified in 28 U.S.C. Section 2101 (c):

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court shall be taken or applied for within ninety days after the entry of such judgment or decree. A Justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Supreme Court Rule 20.4 demarcates when the time for filing a Petition For Writ of Certiorari commences:

> The time for filing a Petition For Writ Of Certiorari runs from the date the judgment or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or its equivalent under local practice). However, if a Petition for Rehearing is timely filed by any party in the case, the time for filing the Petition For Writ Of Certiorari for all parties (whether they requested rehearing or joined in the Petition for Rehearing) runs from the date of the denial of rehearing or of the entry of a subsequent judgment entered on the rehearing.

The Petitioners cannot unilaterally extend the jurisdictional time for filing a Petition For Writ Of Certiorari by submitting an endless stream of Motions for Rehearing below. The Petition For Writ Of Certiorari was due to be filed ninety (90) days from July 5, 1988. The Petition was not timely filed with the Clerk pursuant to Supreme Court Rule 28.2 on or before October 3, 1988, and, therefore, is jurisdictionally out of time.

(B)

THE PETITION FOR WRIT OF CERTIORARI FILED BY THE PETITIONERS IN THEIR CAPACITY AS INDIVIDUALS ONLY IS BARRED BY THE DOCTRINE OF RES JUDICATA AND CONSIDERATION OF COLLATERAL ESTOPPEL

The case under consideration has a long and tortured history. Each of the present Petitioners was originally a named party Defendant in a quiet title action

entitled PERRY SANKEY, JR. et al. v. LUCIUS CASEY, SR., LUCIUS CASEY, JR., ALONZO HARRIS, CHARLES DAVIS, MAHALIA KEY, AND FIRST CHURCH OF ISRAEL, INC., AN ILLINOIS CORPORATION, 78-CH-5, venued in the Circuit Court, First Judicial Circuit, Pulaski County, Illinois. In that case the individually named Defendants appeared and defended in their individual capacities. They were duly and competently represented by retained counsel. On January 5, 1982, the case was called for bench trial. Through counsel and in open Court, Alonzo Harris, Charles Davis and Mahalia Key, as individuals and the Illinois Not-For-Profit Corporation known as the First Church of Israel, Inc. stipulated and acknowledged that they had no right, title, or interest in the subject real estate except whatever derivative rights they may have enjoyed by virtue of membership in an unincorporated association known as the First Church of Israel.

Based upon judicial admissions of the parties made in open Court, an Order of Dismissal was entered (A-1).

The present action was instituted to determine whether the First Church of Israel, an Unincorporated Association, and the individual Defendants, by virtue of membership in that organization had any proprietory in the real estate.

The Appellate Court of Illinois, Fifth Judicial District, dismissed Petitioners' Appeal due to a defective Notice of Appeal. (A-11). Initially the Appeals of the Corporation and Association were dismissed because the Notice of Appeal was signed only by Alonzo Harris, Mahalia Key and Charles Davis as Trustees. The Appellate Court correctly ruled that as executed on behalf of the corporation and association the Notice of Appeal constituted the unauthorized practice of law and was a nullity. (A-19). Upon further consideration on the merits following full-

briefing and argument the Appellate Court thereafter dismissed the appeal as to the remaining Defendants, Alonzo Harris, Charles Davis, and Mahalia Key, because they filed a Notice of Appeal only in their capacity as Trustees of the Defendant religious organization but not in their individual capacities. (A-44).

On October 28, 1988, the Office of the Clerk of the Supreme Court of the United States received Petitioners' Writ For Certiorari. As originally tendered on behalf of the corporation and association the Petition was rejected by the Clerk because, once again, the individual Defendants persisted in the unauthorized practice of law by attempting to file a Petition on behalf of the corporation and association.

Although Supreme Court Rule 33.7 provides that a document returned by the Clerk for failure to comply with rules governing form may still be deemed timely

filed, it does not authorize extension of the jurisdictional time by the filing of a Petition in contravention of that prohibition against unauthorized practice of law.

Neither the First Church of Israel, an Illinois Not-For-Profit Corporation, nor the First Church of Israel, an Unincorporated Association, are parties to the present proceedings. The sole issue is the claimed proprietary rights of the individual Defendants. The identical parties conclusively determined that issue by consent and stipulation in a prior judicial proceeding. The present Petition is barred by the doctrine of res judicata and consideration of collateral estoppel. Parklane Hosiery Co. v. Shore, 439 US 322, 99 S.Ct. 645, 58 L.Ed 2d 552 (1979).

(C)

THE ADJUDICATION OF PROPERTY RIGHTS BY THE TRIAL COURT IN ACCORDANCE WITH "NEUTRAL PRINCIPLES" WAS CONSISTENT WITH PETITIONERS' FREE EXERCISE OF RELIGION AS GUARANTEED BY THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

In Watson v. Jones, 80 US 679, 20 L.Ed 666 (1871) the Court classified questions concerning the rights to property held by ecclesiastical bodies under three general headings: (1) property held in express trust for the teaching, support, or spread of some specific form of religious doctrine belief; (2) properly held by an independent or congregational church, which owes no fealty or obligation to any higher authority; and (3) property held by a hierarchical church. As to hierarchical church organizations

the Watson court ruled that local church organizations could not withdraw from the general church hierarchy, denounce its authority and still retain the use of local church property.

The Watson principle was converted into a constitutional rule in Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church, 344 US 94, St. Ct. 143, 97 L.Ed. 120 (1952). Subsequently, in Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 US 440, 89 S Ct. 601, 21 L.Ed 658 (1969), the Court held that the First Amendment prohibits civil courts from adjudicating competing church property interests on the bases of the Court's interpretation of church doctrine. In essence, the court held that civil courts have no role in determining ecclesiastical questions and that in resolving church property disputes the courts must rely on

"neutral principles" developed for the use in all property disputes.

The trial court below relied solely upon "neutral principles" to adjudicate the competing property interests. (A-3). State statutes, the express language of deeds, church constitutions, charters and by-laws were all scrutinzed. The express findings of fact set forth in the judgment reflect adherence to the "neutral principles" approach and preservation of First Amendment rights of all litigants.

The decision sought to be reviewed does not compel the individual Petitioners to adopt any dogma or practice any religious principles in violation of the First Amendment. The judgment merely requires that those who enjoy the use of church property belong to the church. Petitioners' membership in the congregation is purely volitional. If, however,

they reject membership their privilege to use church property is terminated; all in accord with neutral principles and consistent with First Amendment constraints.

(D)

THE DENIAL OF PETITIONERS' REQUEST FOR APPOINTMENT OF COUNSEL COMPORTED WITH CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND RIGHT TO COUNSEL

The Petitioners proceeded to trial pro se and did an admirable job in their own defense. On appeal the Petitioners made formal request for appointment of counsel which was denied. (A-42). The denial of appointed counsel did not deprive Petitioners of any cognizable constitutional privilege.

By its express terms the Sixth Amendment guarantees a right to counsel only in criminal prosecutions. The case at bar

involved no possibility of criminal sanctions. This case is not a contempt proceeding carrying a potential sanction of incarceration nor does it fall within the purview of any special legislation such as the Civil Rights Act or Habeas Corpus Act wherein the Petitioners may arguably enjoy a statutory right to counsel.

The cases cited and relied upon by Petitioners to establish a deprivation of the right of due process guaranteed by the Fifth Amendment to the United States Constitution are inopposite. None of the cases cited hold that Petitioners are entitled to appointed counsel. Petitioners were afforded due notice and a full and fair opportunity to appear and defend. The Petitioners were afforded their full panoply of constitutional privileges.

IX.

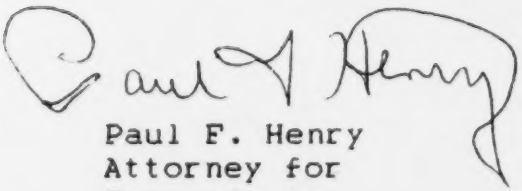
CONCLUSION

The Petition For Writ of Certiorari is jurisdictionally out of time and should be dismissed.

Even if considered substantively the Petition presents no substantial federal question for decision. The Petitioners were afforded all procedural rights guaranteed civil litigants. Most significantly, the property claims of the individual Petitioners are barred by prior judicial proceedings under the doctrine of res judicata.

No compelling reason for review exists. The Petition should be denied.

Respectfully Submitted,



Paul F. Henry
Attorney for
Respondent

Supreme Court, U.S.
FILED
JAN 31 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-925

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ALONZIA HARRIS, CHARLES DAVIS, MAHALIA KEY, THE FIRST CHURCH OF ISRAEL, AN UNINCORPORATED ASSOC., AND THE FIRST CHURCH OF ISRAEL, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

Petitioners,

V.

ISRAELITE BIBLE CLASS, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

Respondent.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ALONZIA HARRIS
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Pro Se

QUESTION PRESENTED

(1) Whether the Order of the Trial Court stripped the members of Petitioner Religious Organization, The First Church of Israel Assoc., The First Church of Israel, Inc., and the children and grandchildren of Petitioners of their vested property rights without them being included as parties or without the minors being provided with legal assistance.

(2) Whether the courthouse doors is being slamed in the face of Petitioners and Petitioners unpopular Religious Organization, The First Church of Israel, as a result of their inability to obtain necessary legal assistance to ascertain their legal rights.

LIST OF PARTIES

The parties of the proceeding below were the petitioners Alonzia Harris, Charles Davis, Mahalia Key and the Respondent the Israelite Bible Class, Inc.

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ISRAELITE BIBLE CLASS, INC., AN ILLINOIS NOT-FOR-PROFIT CORPORATION.

Respondent.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Respondent Attorney of record Paul F. Henry has filed a Brief in opposition to the Petition for A Writ of Certiorari file by Alonzia Harris, Charles Davis, and Mahalia Key pro se. Petitioners believes that most of the points made by the Respondent were fully addressed in the Petition. However, some of the Respondent arguments were not specifically or directly confronted in Petition and do warrant this Brief Reply.

ARGUMENT

1. The Respondent Attorney Mr. Paul F. Henry assert in his Brief, for Respondent in opposition to Petition For Writ of Certiorari

page 34, "The Petitioners proceeded to trial pro se and did an admirable job in their own defense. On Appeal the Petitioners made formal request for appointment of counsel which was denied. (A-42). The denial of appointed counsel did not deprive Petitioners of any cognizable Constitutional Privilege."

The Respondent Attorney Mr. Paul F. Henry stated in his Brief to the Appellate Court

page 15, "Since the argument presented in Defendants' Brief is confusing, obtuse, and sometimes bordering on the undecipherable, Defendants have not performed their duty to this Court of providing in their Brief lucid and persuasive argument." Page 17 of Respondent Appellate Court states, "Defendants' Brief is so confusing that it is most difficult, if not impossible, for Plaintiff to answer."

The Respondent Attorney Mr. Paul Henry appears to be trying to manipulate this Honorable Court by conflicting statements, concerning Petitioners ability to defend themeselves and their homes.

The Appellate Courts denial of request for appointed counsel when it became appearent the Petitioners could not defend themselves

against two highly qualified attorneys violated Petitioners right to due process as required by the Fifth and Fourteenth Amendments of the Constitution of the United States and Article 1 & 2 of the Constitution of the State of Illinois.

The Defendants tried every avenue, contacting private attorneys as well as all public legal assistance groups, such as Land of Lincoln and the Southern Illinois University School of Law Legal Clinic in an unsucessful attempt to get legal representation. The Plaintiff, on the other hand, using funds generated by the land in dispute, hired two highly qualified and experience attorneys who were able to win ever issue and on every motion and appeal against Petitioners. Petitioner, Alonzia Harris who helped with all the legal research has a tenth grade education. Charles Davis, who wrote all briefs and prepared all motions, completed the eleventh grade. Mahalia Key, who also assisted in the legal efforts of Petitioner, completed one year of college. Due process is not a

technical conception with a fixed content unrelated to time, place, and circumstances; rather, it is flexible and calls for such procedural protections as particular situations demands. Mathews V. Eldridge, 96 s. ct. 893, 424 U.S. 319, 47 L. ed 2d 18. (1976). Petitioners did not choose to be pro se litigants but were thrust into the position of defending themselves pro se, or letting Plaintiff remove them from their homes and families. Application of the due process clause is an uncertain enterprise which must discover what "fundamental fairness" consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake; due process also requires the assessment of the risk that procedures being used will lead to erroneous decisions. U.S.C.A. Const. Amend. 5, 14, McCleskey V. Kemp. 753 F. 2d 877, Crist V. Lane, 745 F. 2d 476, U.S. V. Crozier, 777 F. 2d 1376 Walters V. National Ass'n of Radiation Survivors, 105 s. ct 3180

Haygood V. Younger, 769 F.2d 1350

Hanke V. Walters, 740 F.2d 654

Davis V. Manfield Metropolitan Housing Authority, 751 F.2d 180

2. The Respondent attorney Mr. Paul Henry asserts that the adjudication of property rights by the trial Court was done in accordance with "Neutral Principles" page 31, of Respondent Brief in opposition to Petition for Writ of Certiorari.

The Trial Court did not use "Neutral Principles" when it refused to accept and examine defendants Exhibit No. "4", the Abstracts of the real estate, showing a true history of recorded title and business transaction relating to the real estate from 1953 to 1986, compiled by a license Abstract Company, Abstractor of Titles for Pulaski County 232 Main Streets Mound City, Illinois.

The funds used to acquire the property were contributed entirely by church members, giving each member the right to erect and maintain a home on the real estate at his or her own expense. 1953 Israelite Bible Class

Inc., By Laws Article 7: 1-5.

From 1971 pursuant to resolution adopted by the congregation, the name was changed to The First Church of Israel, the church repeatedly has borrowed money on the property. This indebtedness is evidenced by security deeds variously issued in the name of The First Church of Israel.

In 1977 a schism arouse when previously members of The First Church of Israel sever their connection with The First Church of Israel and restablish the old Organization the Israelite Bible Class, taking over the property, farm equipment and the place of worship, to the total exclusion of The First Church of Israel members.

The trial Court violated Petitioners Constitutional rights in adjudication of property rights of two religious organization, and failing to judge on the principles and rules established by prior authority.

Const. Amend. 1, 14

Mathias Ferraria et al., V. John Vasconcellos et al., 23 Ill, 456

(31 Ill 25), January Term (1863).

Christian Church V. Church of Christ, Supra 219 Ill, 503, 76 N.E. 703.

Smith et Al. V. Pedigo et al., May 1893, 145 Ind 361, 33 N.E. 777.

Christan Church of Sand Creek et al. V. Church of Christ of Sand Creek et al. 219 Ill 503, 76 N.E. 703

Illinois Central Railroad Company, A Corp, V. The Michigan Central Railroad Company, A Corp, and The York Central Railroad Company, A Corporation. 153 N.E. 2d 627 (1958)

3. Alonzia Harris, has been a member and resident on the real estate acquire by the church members for 25 years, Charles Davis has been a member and resident on the real estate acquire by church members for 14 years, Mahalia Key has been a member and resident on the real estate acquire by church members for 16 years.

Respondent attorney Mr. Paul Henry on page 27 of his Brief in opposition to Petition For Writ of Certiorari, make reference to a stipulation introduced by Petitioners late

Attorney Mr. Clinton Thurston concerning the interest of Petitioners. Petitioners have paid joining fees of one thousand dollars for men and five hundred for woman, special assessment, montly assessment to help pay off the morgages and taxes over years, as a resident of the real estate.

Weisbrod V. Chicago & Nothwestern Railway Co., 20 Wis. 419; In the Weisbrod case an admission upon a former trial by the attorney for the defendant, as to the amount of damages sustained by Plaintiff, was introduced as an admission in a subsequent trial. "This Court said: Such admissions are frequently made for the purpose of saving time, where counsel are confident of success upon some other point; and when so made, are always understood to have reference to the trial when pending, and not as stipulations which shall bind at any future trail."

Respondent attorney Mr. Paul F. Henry in preparing his Brief in opposition of Petition For Writ of Certiorari, failed to comply with Supreme Court Rule 33 1.(A) in

preparing his Appendix.

CONCLUSION

Based upon the foregoing arguments and authorities, we respectfully request that a Writ of Certiorari be issued to review the judgment of the Illinois Appellate Court Fifth Judicial District.

Respectfully Submitted,

Alonzia Harris
Charles Davis
Mahalia Key

Alonzia Harris
Charles Davis
Mahalia Key
(Pro Se)
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618-845-3600

January 31, 1989